TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~355.~~ 92

A. T. STEWART & CO., PLAINTIFFS IN ERROR,

vs.

MEYER SONNEBORN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

FILED FEBRUARY 12, 1876.

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1 *Caption of term.*

May term, 1875.

At a circuit court of the United States for the 5th judicial circuit and middle district of Alabama, begun and holden at Montgomery, Alabama, on the third day of May, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the Hon. John Bruce, judge of the United States district court for the middle district of Alabama, sitting as circuit judge: N. S. McAfee, esqr., United States district attorney: and Robert W. Healy, United States marshal, by whom the court was duly opened at 12 o'clock m.

On Thursday, May 27th, A. D. 1875, that being a day of said term. Present, the honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, and the honorable John Bruce, judge of the district court of the United States for the State of Alabama, and the following proceedings were had, to wit:

2 *Complaint.*

MEYER SONNEBORN, PLAINTIFF,
vs.
ALEXANDER T. STEWART, GEORGE FOX, AND William Libbey, mercantile partners in the city and State of New York, under the firm-name of A. T. Stewart and Company, defendants.

In circuit court. Fall term, 1874.

Complainant claims of the defendants fifty thousand dollars, for that whereas, heretofore, to wit, on or about the fifteenth day of August, A. D. 1873, and for a long time prior thereto, and until the commencement of the bankrupt proceedings in the district court of the United States for the middle district of Alabama, at Montgomery, as hereinafter set forth, complainant had been and was a merchant in good standing and credit in the cities of Enfaula, in said county of Barbour, and in Baltimore, in the State of Maryland, and in New York, in the State of New York, and elsewhere:

And whereas, at and before the time above mentioned, complainant was engaged in the business of selling goods and merchandise in the
3 said city of Eufaula, where he had commenced business on a stock of about twenty thousand dollars, which had been replenished as the trade made it necessary: and in the said month of August, 1873, when sales were less than in any other seasons of the year, the said stock was and had been reduced to about the value of twelve thousand dollars:

And whereas complainant, when said bankrupt proceedings were commenced, was making his arrangements to commence and establish a mercantile business in the city of Dallas and State of Texas, a growing city, well situated for a prosperous trade, and where he had leased a store-house:

And whereas complainant intended to purchase, and was able, and had engaged to purchase, a large stock of goods and merchandise for

the approaching fall and winter trade in said city of Dallas, the said defendants, not having any debt or demand against complainant, or any other reasonable or probable cause therefor, but wrongfully, maliciously, vexatiously, recklessly, and oppressively, on or about the fifteenth day of August, 1873, filed their petition against complainant in the said district court of the United States, at Montgomery, wherein said defendants falsely alleged that they were creditors of complainant to the amount of over three thousand dollars, or other large sum; and,
4 among other things, also falsely alleged that complainant was insolvent and a bankrupt; and also falsely alleged that complainant, in view of bankruptcy, had committed an act of bankruptcy, in violation of the bankrupt laws of the United States.

And defendants, without having any debt or demand against complainant, or any reasonable or probable cause therefor, wrongfully, maliciously, vexatiously, recklessly, and oppressively prayed among other things in their said petition, that complainant be adjudged an involuntary bankrupt, he never having committed or been guilty of any act of bankruptcy; and also for a writ of injunction restraining complainant from managing, controlling, using, enjoying, or disposing of any of his estate, which injunction issued from said district court by the clerk thereof, and was served on and obeyed by complainant.

And defendants, without having any debt or demand against complainant, or any reasonable or probable cause therefor, wrongfully, maliciously, vexatiously, recklessly, and oppressively, also prayed in their said petition for a warrant or writ of seizure to issue from said district court, and take possession of plaintiff's estate under the bankrupt laws of the United States; and in accordance with the said
5 prayer of said petition, the said warrant or writ of seizure did issue from said district court by the clerk thereof, on August 15th, 1873, and under and by virtue of the same, the marshal for said district seized and took possession of the entire stock of goods and merchandise belonging to complainant in the said city of Eufaula, on the 16th day of August, 1873, and wholly deprived complainant of the possession, actual use, and enjoyment of the same; and the store-house in which complainant had said stock and was doing business was closed by said marshal under said writ of seizure, and the business and pursuit of complainant were wholly suspended, broken up, and destroyed by said writs of injunction and seizure.

And complainant avers that his said stock of goods and merchandise since the day of the seizure thereof as aforesaid on or about the 16th day of August, 1873, to the day of the dismissal of said petition out of said district court on the 5th day of September, 1874, as hereinafter stated, has been out of his possession and control, and in the possession and control of said United States marshal under said writ of seizure, and the said stock has been imperfectly packed and eaten by moths, and stained and
6 faded, and soiled in many ways, and rendered unsaleable, and reduced in value and damaged since said seizure, and before being returned to complainant at least two-thirds of their value when seized as aforesaid, to wit, at least eight thousand dollars or other large sum.

Complainant further states that at the time said petition was filed under said bankrupt laws in said district court there had been commenced, and was then pending and undecided, an action of assumpsit wherein said A. T. Stewart & Co. were complainants, and the said Meyer Sonneborn was defendant in the circuit court of county of Barbour; and complainant avers that said last named action was brought by said A. T. Stewart & Co. against said Meyer Sonneborn to recover the same

dentical debt or demand that is stated in said petition in said district court to be due and owing by complainant to defendants, and the said cause of said action in said State court, and the said claim, debt or demand mentioned in said petition in said district court are one and the same and no other, and the parties thereto are the same and no others.

And complainant avers that before he was adjudged a bankrupt
7 and before there was any order or other action or proceeding in said district court on said petition or otherwise suspending or restraining or affecting in any way the pendency of said action of assumpsit in said State court for the jurisdiction of said State court to try and determine the issue joined therein, the said cause was tried by a jury regularly empanneled in said State court and duly sworn to try said issue, and a verdict rendered in favor of complainant, who was the defendant in said action as aforesaid, and on said verdict the said State court rendered judgment in favor of said Sonneborn, and against A. T. Stewart & Co.

And complainant further avers that the said A. T. Stewart & Co. appealed from the judgment of said circuit court to the supreme court of Alabama, and on the hearing of said appeal the judgment of said circuit court was in all things affirmed by said supreme court; and the said action of assumpsit by said Stewart and Co. against said Sonneborn is wholly ended and determined in favor of said Sonneborn as aforesaid.

And complainant further avers that defendants, notwithstanding the verdict and judgment against them in said State court settling forever the fact that complainant owed them nothing, and
8 that the allegation in their said petition that they were creditors of complainant was untrue, and that they had no right to file said petition and to continue in force against complainant said writs of injunction and seizure: yet said defendants wrongfully, maliciously, vexatiously, recklessly, and oppressively continued to prosecute their said petition in said district court, and continued to enforce the mandates of said writs of injunction and seizure, and to keep complainant out of the possession, use, and engagement of his estate, and to break up his business and pursuit; and complainant was compelled to employ counsel, and, at great trouble and expense, was continued in the defense of said wrongful, malicious, vexatious, reckless, and oppressive proceedings in bankruptcy in said district court.

And complainant avers that on the hearing and final determination of said petition in said district court, the said petition was dismissed out of said district court, and all proceedings in relation thereto forever ended and determined by said order, judgment, and decree of said district court, now in full force.

9 Plaintiff says that by the said wrongful, malicious, reckless, and oppressive acts of defendants he has been greatly injured, and hath sustained damage in the loss of his goods and the value thereof to the amount of eight thousand dollars, or other large sum: and also in the amount of necessary and reasonable lawyers' fees paid and contracted to be paid by him to his attorneys employed in and about his expense in said wrongful proceedings, and in bringing this action to recover the damages he has sustained, as hereinafter set forth, and which defendants refuse and fail to pay plaintiff, the said fees being reasonably worth fifteen thousand dollars, or other large sum; and besides, plaintiff has been compelled to devote most of his time, and to expend his means in necessary travel and hotel bills, in preparing his defense, and in resisting said wrongful, malicious, vexatious, and oppressive acts of defendants; and plaintiff has suffered great anxiety,

and been troubled in his mind and feelings by said wanton and vexatious proceedings, for which he claims, and is reasonably entitled to recover, the sum of ten thousand dollars.

And plaintiff avers that by said wrongful, malicious, vexatious,
10 and oppressive proceedings against him by said defendants, he has lost his credit and standing as a merchant, and been broken up in his business and pursuit, and injuriously affected in all his business relations, means, and resources; and that his damage thereby sustained in these respects amount to twenty-five thousand dollars, or other large sum.

And also, for that, whereas, heretofore, to wit, on the 15th day of August, 1873, and for a long time prior thereto, and until the commencement of the proceedings in bankruptcy in the district court of the United States for the middle district of Alabama, at Montgomery, as hereinafter set forth, complainant had been and was a merchant in good standing and credit in the cities of Eufaula, Alabama, and in Baltimore, in the State of Maryland, and in the city of New York, in the State of New York, and elsewhere; and at and before the time above mentioned plaintiff was engaged in the business of selling goods and merchandise in the said city of Eufaula, where he had commenced business on a stock of about twenty thousand dollars, which had been replenished as the trade made it necessary; and in the said month of August, 1873, when sales were less than in other seasons of the year, the
11 said stock had become reduced by sales to about the value of twelve thousand dollars; and plaintiff, when said bankrupt proceedings were commenced, was making and had made arrangements to commence a mercantile business in the city of Dallas and State of Texas, a growing city well located for a prosperous trade, and where plaintiff had leased a store house, and plaintiff intended to purchase, and was able and had arranged to purchase a large stock of goods and merchandise for the approaching fall and winter trade in said city of Dallas. The said defendants, not having any debt or demand or other cause of action against this plaintiff, wrongfully, vexatiously, recklessly, and oppressively, on the 15th day of August, 1873, filed their petition in bankruptcy in the district court of the United States for the middle district of Alabama, at Montgomery, wherein said defendants falsely and recklessly alleged that they were creditors of this plaintiff to the amount of about three thousand dollars, or other large sum; and falsely alleged in said petition that this plaintiff was insolvent and a bankrupt, and had committed several acts of bankruptcy violative of the bankrupt
12 laws of the United States, and prayed said district court in said petition that this plaintiff be declared a bankrupt, and that a warrant issue to take possession of the estate of this plaintiff; and also, that process of injunction issue from said district court restraining this plaintiff and others from controlling, disposing, removing, or in any way interfering with the stock of goods and merchandise then in plaintiff's store in the said city of Eufaula.

And plaintiff avers that by the order of said district court made on the 15th day of August, 1873, a copy of said petition was directed to be served on this plaintiff, and that this plaintiff appear at said district court, as a court of bankruptcy, on the 21st day of August, 1873, and show cause why the prayer of said petition should not be granted.

And plaintiff avers that on the 15th day of August, 1873, without first obtaining any order or other authority from said district court, or the judge thereof, the defendants knowing that no order or other authority therefor had been made or granted by the said district court, or

the judge thereof, caused to be issued the process which is in words and figures following, to wit:

13 *Writ of seizure.*

UNITED STATES OF AMERICA:

In the district court of the United States for the middle district of Alabama. In bankruptcy.

In the matter of Meyer Sonneborn, against whom a petition for adjudication of bankruptcy has been filed in said court.

MIDDLE DISTRICT OF ALABAMA, *ss:*

To the marshal of said district, or to either of his deputies, greeting:

Whereas a petition for adjudication of bankruptcy was on the 15th day of August, A. D. 1873, at 12 o'clock m., filed against Meyer Sonneborn, of the county of Barbour and State of Alabama; and whereas, further, it is represented by the petition of A. T. Stewart & Co., a creditor of said bankrupt, who have proved their debt, that the stock of goods of said debtor is about to be removed or disposed of, so as to prevent the same from coming into the hands of such assignee as may be appointed for said bankrupt estate:

Now, you are therefore, by virtue of the said petitions, according to the provisions of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March
14 2nd, 1867, and the amendatory acts thereto required, authorized, and empowered, as messenger, to take possession of all the estate, real and personal, of said Meyer Sonneborn, debtor, except such as may be by law exempt from the operation of said act, and all their deeds, books of accounts, and papers, and to keep the same safely until the issue of said alleged bankruptcy is decided, and until the further order of this court; and have you this warrant with your doings thereon before this honorable court, on the 21st day of August, A. D. 1873, at 11 a. m., in the city and county of Montgomery.

Witness the honorable Richard Busteed, judge of said court, and the seal thereof, at Montgomery, in said district, this 15th day of August, A. D. 1873.

[SEAL.] E. C. V. BLAKE,
Clerk U. S. Dist. Court, Mid. Dist. of Alabama.

Received August 16th, 1873.

R. W. HEALY,
U. S. Marshal.
Per T. D. PATTERSON,
Special Dep.

Executed the within provisional warrant of seizure by taking possession of the within-named Meyer Sonneborn's stock of general merchandise, in the city of Eufaula, Ala., and by taking possession of all his books and papers found in the store where he had his said stock of general merchandise, on the 16th day of August, 1873.

15 R. W. HEALY,
U. S. Marshal.
Per T. D. PATTERSON,
Special Dep.

Received and filed this 1st day of September, A. D. 1873, @ 9 a. m.
E. C. V. BLAKE,
Clerk.

And plaintiff avers that defendants caused said warrant to be placed in the hands of the marshal of the United States for said district, in said State of Alabama, on the 16th day of August, 1873, and that on the said 16th day of August, the said defendants caused the said marshal, under the direction and authority of said warrant and the mandate thereof, to take possession of the entire stock of merchandise belonging to this plaintiff, in said city of Eufaula, and of all the books and papers belonging to this plaintiff, and in his said store in Eufaula.

And plaintiff avers that defendants, without having any debt or demand or other cause of action against him, and he having committed no act of bankruptcy in violation of the bankrupt laws of the United States, wrongfully, maliciously, vexatiously, recklessly, and oppressively, caused and procured the said marshal to take and keep possession of said stock and books and papers, from the 16th day of August, 1873, to the day when the said petition in bankruptcy, and the
16 said warrant, and all the proceedings in said bankrupt cause were finally dismissed out of said district court by the judge thereof, on final hearing of the same, on the 5th day of September, 1874, and the order and decree of said district court dismissing said proceedings and process in bankruptcy out of the same are in full force, and said proceedings in bankruptcy and said warrant and injunction have been wholly ended, annulled by the said order and decree of said district court.

And plaintiff further avers that the defendants, not having any debt or demand or other cause of action against this plaintiff, and he not having committed any act of bankruptcy in violation of said bank'upt laws, and knowing that no order or authority had been made or granted by said district court, or the judge thereof, for the issue of said writ of injunction, the said defendants caused and procured the same to issue in words and figures following, to wit:

Injunction.

District court of the United States for the middle district of Alabama.
In bankruptcy.

The President of the United States to the marshal of said district, greeting:

17 You are hereby commanded to make known to Edward B. Young & Son, I. G. L. Martin & Son, John McNab and Price, and the agents and attorneys of each of them, and all other persons, that under and by virtue of an order made by the Hon. Richard Busteed, judge of the dis rict court aforesaid, on the application of the plaintiffs on a petition filed by him in said court in bankruptcy, wherein A. T. Stewart & Co. are plaintiffs and Meyer Sonneborn is defendant, they and each of them and all other persons are enjoined and restrained, until the further order of said court, from removing, disposing of, or in any manner interfereing with a certain stock of goods and general merchandise held and owned by said Meyer Sonneborn at the time of the filing of said petition, in the city of Eufaula, Alabama.

And you are further enjoined and restrained, until the further order of this court, not remove, dispose of, or in any manner interfere

with any moneys or other assets in your possession, or under your control, placed there by the said Meyer Sonneborn, or one Price, or any other person.

Herein fail not, and have this writ with your endorsement thereon of how you have executed the same before said district court, in bankruptcy, to be held on the 21st day of August, A. D. 1873.

18 Witness Hon. Richard Busteed, judge of the court aforesaid, this fourth Monday of May, in the year of our Lord one thousand eight hundred and seventy-three.

Issued the 16th day of August, in the year of our Lord one thousand eight hundred and seventy-three.

Attest:

[SEAL.] E. C. V. BLAKE,
Clerk U. S. District Court Middle District of Alabama.

Received August 19th, 1873.

U. S. Marshal.

Executed by serving copy of the within injunction on the within-named Edward B. Young & Son, I. G. L. Martin & Son, John McNab, and one Price, who had charge of Meyer Sonneborn's stock of goods in Eufaula, Alabama, on the 16th day of April, 1873, this the 19th day of August, 1873.

R. W. HEALY,
U. S. Marshal,
Per T. D. PATTERSON,
Special Dep.

Issued this 16th day of August, 1873.

E. C. V. BLAKE, *Clerk.*

Returned and filed this 1st of Sept'r, A. D. 1873, @ 9 a. m.
E. C. V. BLAKE, *Clerk.*

And plaintiff avers that defendants caused the said injunction to be placed in the hands of said marshal, and required him to obey

19 the mandate of said injunction, which the said marshal did, as appears from his return on said injunction as aforesaid.

And plaintiff avers that he was restrained by said injunction as said injunction directed he should be, until the same was dismissed and dissolved as aforesaid.

And plaintiff avers that said stock of goods were imperfectly preserved from injury after said seizure; that the same have been eaten by moths, and stained and faded, and soiled and injured in many ways, and have become unsaleable and greatly reduced in value since the same have been out of his possession as aforesaid, to wit, at least the sum of eight thousand dollars.

Complainant says that by the said wrongful, malicious, vexatious, reckless, and oppressive acts of defendants, he has been greatly injured, in this, that in addition to the loss he has sustained in the value of his stock of goods and merchandise as aforesaid, he has been put to great expense in necessary and reasonable fees paid and contracted to be paid to his attorneys employed by him in his defense in said proceedings in said district court under the bankrupt laws of the United States, which

fees he is advised and believes and avers to be reasonably worth
20 two thousand dollars; and besides, complainant has been compelled to devote a large portion of his time, and to expend a great deal of his means in necessary travel and hotel bills in defending himself against said proceedings in said district court, and in employing attorneys to bring and prosecute this action, and for his own time, expense, labor, and trouble in attending to the same, which amount to fifteen thousand dollars, or other large sum.

And complainant states, that by said wrongful, vexatious, reckless, and oppressive acts of defendants, he has lost his credit and standing as a merchant, and been broken up in his said business and pursuit, and permanently disabled and injuriously affected in all his business relations and resources, and that his damages thereby sustained amount to twenty-five thousand dollars, or other large sum.

Wherefore, the said Meyer Sanneborn saith that he is injured, and hath sustained damage to the value of fifty thousand dollars, and therefore he brings his suit.

JAMES L. PUGH,
S. H. DENT,
Plaintiff's Att'ys.

Plea.

1st. The defendants, for answer to the complaint, saith, in short, by consent, they are not guilty of the matters alleged therein, and of this they put themselves upon the country.

SHORTER & BROTHER AND HOLTZCLAW,
Att'ys for Def'ts.

21 Complaint filed in office, November 18th, 1874.
JNO. C. McNAB, *Clerk.*

Verdict of jury.

We, the jury, find for the plaintiff, and assess damages at the sum of twenty-one thousand ($21,000) dollars.

WM B. JACKSON, *Foreman.*

Transcript from Barbour circuit court.

Be it remembered that, on the 5th day of October, 1874, the following attachment was sued forth, in words and figures, as follows, to wit:

THE STATE OF ALABAMA,
Barbour County:

Before me, B. B. McGraw, chancellor for the eastern division of said State, personally appeared at Eufaula, in said county, Meyer Sonneborn, a resident citizen of said county, who makes oath, administered by me, that A. T. Stewart & Co., a mercantile partnership, composed of Alexander T. Stewart, George Fox and William Libbey, using the common name of "A. T. Stewart & Co.," reside and do business in the city and State of New York, and are non-resident citizens of the State of Alabama; that said A. T. Stewart & Co. are justly indebted to affiant in the sum of fifty thousand dollars, now due and unpaid, and that an attachment is not sued out for the purpose of vexing or harrassing said A. T. Stewart & Co., or either of them, or for any other improper or unlawful motive or purpose.

And, in addition to the foregoing affidavit, the said Meyer Sonneborn also makes oath, administered by me to the following special facts and circumstances, so as to make me to determine the amount for
22 which a levy of said attachment must be made, viz:

That, on or about the 1st day of August, 1873, and for a long time prior thereto, and until the commencement of the proceedings in the bankrupt court, as hereinafter set forth, affiant had been and was a merchant in good standing and credit in the cities of Eufaula in said county, and Baltimore, in the State of Maryland, and in New York, in the State of New York, and elsewhere in the United States.

That, at and before the time above stated, affiant was engaged in the business of selling goods and merchandise in the said city of Eufaula, where he had commenced business on a stock of about twenty thousand dollars, original costs, which stock had been replenished as the trade made it necessary; and in the said month of August, 1873, when sales were less than any other seasons of the year, the said stock was reduced to about twelve thousand dollars' worth of goods and merchandise.

That affiant was making his arrangement to commence and establish a mercantile business in the city of Dallas, in the State of Texas, a growing place, and well suited to a prosperous trade; that affiant had leased a store-house in Dallas, and intended soon to make his
23 purchases of a large stock of goods and merchandise for the approaching fall and winter trade, which stock he was then able to buy on a credit in the said cities of New York and Baltimore, and where he had arranged to do so.

And affiant states that A. T. Stewart & Co., not having any debt or demand against affiant, and well knowing that affiant owed them nothing, (as appears from the judgment of the circuit court of said county wherein the said A. T. Stewart & Co. were plaintiffs, and affiant was defendant, in a suit involving the question of affiant's indebtedness to said A. T. Stewart & Co., and in which suit a verdict and judgment was rendered in favor of affiant), on or about the 1st day of August, 1873, filed their petition in the district court of the United States for the middle district of Alabama, at Montgomery; in which petition the said A. T. Stewart & Co. falsely alleged that they were creditors of affiant to the amount of over thirty-five hundred dollars; and, among other things, falsely alleged that affiant was insolvent and a bankrupt, and that affiant, in view of bankruptcy, had committed an act of bankruptcy under the bankrupt laws of the United States, and prayed, among other things, that affiant be adjudged an involuntary bankrupt, and
24 in the mean time prayed for and obtained a writ of injunction, restraining affiant from managing, controlling, or disposing of any of his estate, which injunction was served upon affiant, and obeyed by him, under the order of the said district court, granted on the said petition of the said A. T. Stewart & Co.; and the said petition of the said A. T. Stewart & Co. also prayed for a writ of seizure to issue from said bankrupt court; and in obedience to said prayer the said writ did issue from said district court, and under said writ of seizure, and in obedience to its mandate, the marshal of the United States in said district court seized and took possession of the entire stock of goods and merchandise belonging to affiant in the said city of Eufaula, and wholly deprived affiant of the possession and control of the same, and the store-house in which affiant had said stock of goods and merchandise, and was doing business as aforesaid, was closed by said marshal, under said writ, and the business and pursuit of affiant were wholly suspended, and he thereby prevented from making any use of his estate, means, or credits,

And affiant states that said stock of goods, since the day of said seizure, on or about the middle of August, 1873, have been in the
25 store and warehouse of Clarke, Hart & Co., in Eufaula, under the direction and control of said marshal, and imperfectly packed in boxes and cases, and the said goods have been greatly damaged by being so packed for such a length of time; and besides being eaten by moths, and stained, and faded, and soiled in many ways, the said stock has, in fact, become unsaleable from becoming unfashionable, and affiant's best judgment is that said stock of goods and merchandise has been reduced in its reasonable market value fully two-thirds.

Affiant also states that by the unlawful acts of said A. T. Stewart & Co. his credit and standing as a merchant has not only been entirely destroyed and valueless to him since the commencement of said bankrupt proceedings to the final termination of the same, but affiant states said wrongful acts of said A. T. Stewart & Co. have permanently impaired his good credit and standing as a merchant.

Affiant also states that from the judgment of the circuit court in his favor upon the question of said indebtedness the said Stewart & Co. appealed to the supreme court of Alabama, and the said supreme court affirmed the judgment in all things.

Affiant further states that, notwithstanding the judgment of
26 said State courts in his favor, forever settling the question of affiant's indebtedness to Stewart & Co. against them and in affiant's favor, the said Stewart & Co. continued to prosecute their said proceedings in bankruptcy against affiant, and vexatiously and oppressively pursued him, and compelled him further to defend the same, at great expense, and delay and loss of time, until the said district court adjudged and decreed in favor of affiant on said bankrupt proceedings, and wholly dismissed the said petition of said Stewart & Co. against affiant out of said district court.

Affiant further states that he has been put to great expense in necessary and reasonable lawyers' fees, for professional services rendered him in his defense against said proceedings in bankruptcy, which fees he is advised and believes are reasonably, two thousand dollars, for which he is liable; and, besides, he has been compelled to devote his time to the defense of said bankrupt proceedings, and has paid out and expended large sums in necessary travel, hotel bills, and other unavoidable and necessary expenses.

Wherefore he states that, under all the facts and circumstances, the said Stewart & Co. are justly indebted to him in the said sum of fifty thousand dollars, for which affiant asks your honor to direct a levy
27 to be made.

MEYER SONNEBORN.

Sworn to and signed before me, this 5th day of October, 1874, as witness my hand.

B. B. McCRAW,
Chancellor.

Attachment bond.

THE STATE OF ALABAMA,
Barbour County:

Know all men by these presents, that we, Meyer Sonneborn, as principal, and the undersigned, as sureties, acknowledge to owe and be indebted to A. T. Stewart & Co., a mercantile partnership in the city

and State of New York, composed of Alexander T. Stewart, George Fox, and William Libbey, using common name of A. T. Stewart & Co., in the sum of one hundred thousand dollars, for the payment of which we bind ourselves, our heirs and legal representatives, firmly by these presents unto said A. T. Stewart & Co., their heirs, assigns, and legal representatives. Witness our hands and seals, this the 5th day of October, 1874.

The condition of the above obligation is such that whereas the above-named Meyer Sonneborn has made an affidavit for an attachment against the estate of A. T. Stewart & Co., the above-named
28 obligees, and obtained the same on the order of and issue of the writ by B. B. McCraw, chancellor of the eastern division of said State, returnable to the next term of the circuit court in and for said county, for the sum of fifty thousand dollars, sworn to be due by said obligees to said principal obligor:

Now, if the said Meyer Sonneborn shall prosecute the said attachment to effect, and pay the said A. T. Stewart & Co. all such damages as they may sustain from the wrongful or vexations suing out of such attachment, then the above obligation is void and not else.

MEYER SONNEBORN.	[L. S.]
GEO. A. STEIN.	[L. S.]
B. BERNSTEIN.	[L. S.]
A. BERRINGER.	[L. S.]
L. SHENFIELD.	[L. S.]
M. LANG.	[L. S.]
S. STERN.	[L. S.]
L. OPPENHEIMER.	[L. S.]
H. C. HART.	[L. S.]
A. I. LOCKE.	[L. S.]
I. STEURERMAN.	[L. S.]

Approved 6th October, 1874.

B. B. McCRAW,
Chancellor.

Writ of attachment.

THE STATE OF ALABAMA,
Barbour County:

To any sheriff of the State of Alabama:

29 Whereas Meyer Sonneborn hath complained on oath to me, B. B. McCraw, chancelor of the eastern division of said State, that A. T. Stewart & Co., a mercantile partnership composed of Alexander T. Stewart, George Fox, and William Libby, using said common name, are justly indebted to the plaintiff in the sum of fifty thousand dollars, and the plaintiff having made affidavit and given bond as required by law in such cases, you are hereby commanded to attach so much of the estate of the said A. T. Stewart & Co., or either of the members of said firm, as will be of value to satisfy said debt and costs, according to the complaint, and such estate, unless replevied so to secure, that the same may be liable to further proceedings thereon, to be had at the next term of the circuit court of Barbour County, to be held at the court-house thereof, when and where you must make known how you have executed this writ.

Witness my hand this the 6th day of October, 1874.

B. B. McCRAW,
Chancellor.

Special writ, &c.

The plaintiff having made affidavit before me, in writing, of the special facts and circumstances upon which he claims that the defend-
30 ants are justly indebted to him in the sum of fifty thousand dollars, so as to enable me to determine the amount for which a levy must be made, you are hereby directed and required to make a levy of said attachment on the property of the defendants of value sufficient to pay the plaintiff the sum of fifty thousand dollars.

Witness my hand this 6th day of October, A. D. 1874.

B. B. McCRAW,
Chancellor.

Sheriff's returns.

Executed this attachment by serving process of garnishment upon S. Woxelbourne & Co. and Shorter & Brother, who are supposed to be indebted to, or have effects of defendants in their possession or under their control.

October 22nd, 1874.

J. C. FLOURNOY, *Sh'ff.*
By T. D. PATTERSON, *D. S.*

Branch writ of attachment to Mobile County.

THE STATE OF ALABAMA,
Barbour County:

To any sheriff of the State of Alabama:

Whereas Meyer Sonneborn hath complained on oath to me, B. B. McCraw, chancellor of the eastern division of said State, that A. T. Stewart & Co., a mercantile partnership composed of Alexander
31 T. Stewart, George Fox, and William Libbey, using said common name, are justly indebted to the plaintiff in the sum of fifty thousand dollars, and the plaintiff having made affidavit and given bond as required by law in such cases, and said original attachment having been issued by me as said chancellor, returnable to the next term of the circuit court of Barbour County, to be held at the court-house thereof, you are hereby commanded by this branch writ of attachment to attach so much of the estate of A. T. Stewart & Co., or either of the said members of the said firm, as will be of value to satisfy the said debt and costs, according to the complaint, and such estate, unless replevied so to secure, that the same may be liable to further proceedings thereon, to be had at the next term of the circuit court for the county of Barbour, to be held at the court-house thereof, when and where you must make known how you have executed this writ.

Witness my hand this 6th day of October, 1874.

B. B. McCRAW,
Chancellor.

Special writ to the sheriff of Mobile Co.

The sheriff of Mobile County, in the State of Alabama, at Mobile, is hereby directed and required to make a levy of said branch writ
32 of attachment on the property of the defendants of value sufficient to pay the plaintiff the sum of fifty thousand dollars. The

levy may be made on any real or personal property of defendants in your county, or by service of writs of garnishment on any persons in your county supposed to be indebted to said defendants.

Witness my hand this 6th day of October, 1874.

B. B. McCRAW,
Chancellor.

Sheriff's return.

Received, Mobile, Ala., October 9th, 1874, at 11 o'clock a. m., and on the same day I levied this attachment on monies, &c., supposed to be in the hands of William Frobichstein and David R. Dunlap, by serving on each of them a copy of the summons for garnishee in attachment, which is hereto attached; also, on the same day, I levied, on monies, &c., supposed to be in the hands of E. P. Herpeis & Co., by serving a copy of the same on A. T. Herpeis, one of the firm of E. P. Herpeis & Co.; also, on the same day, I levied on monies, &c., supposed to be in the hands of Phelan & Delamore, by serving on E. J. Delamore, one of said firm, a copy of the said garnishment; and also, on the 10th day of October, 1874, I levied on monies, &c., supposed to be in the hands of P. H. Pippin & Co., by serving on said P. H. Pippin a copy of
33 said garnishment; a copy of the garnishment served on the above-named parties is hereto attached, and herewith returned. No other property of defendants found in my county.

Oct. 15th, 1874.

RUFUS DANE, *Sheriff.*
By J. EILAND, *D. S.*

Writ of garnishment.

STATE OF ALABAMA,
Mobile County:

MEYER SONNEBORN *vs.* A. T. STEWART & CO., DEFENDANTS, AND William Frobechstein, E. P. Herpies & Co., Davis R. Dunlap, and Phelan & Delamore, and P. H. Pippen & Co., garnishee.	Branch writ of attachment.

GENTLEMEN: You are hereby commanded to appear at the next term of the circuit court of Barbour County, at the place of holding the same, then and there, within the three first days of the term, to answer on oath whether you were indebted to the above-named defendants at the time of the levy of the attachment in the foregoing-stated cause, or at the time of making your answer hereto, and in what sum or sums, and whether you will not be indebted in future to the said defendants
34 by a contract then existing, or at the time of the service of this summons, and whether you have not in your possession, or under your control, personal or real property, or things in action, belonging to A. T. Stewart & Co.

Herein fail not, and have you then and there this writ.

Witness my hand this 9th day of October, 1874.

RUFUS DANE, *Sheriff,*
By JEROME EISLAND, *D. S.*

Answer of garnishee, E. J. Delamore.

STATE OF ALABAMA,
Mobile County:

In the circuit court of Barbour County.

MEYER SONNEBORN
vs.
A. T. STEWART & CO., DEFENDANTS, AND
Phelan & Delamore, garn's.

And now comes E. J. Delamore, one of the firm of Phelan & Delamore, garnishees in this case, and for answer to the writ of garnishment served upon said firm of Phelan & Delamore, upon oath, says that at the time of the service of said garnishment, said garnishees were indebted to the defendants, and are now indebted to said defendants in the sum of three thousand five hundred and thirty-five $\frac{82}{100}$ dollars; that they will not be indebted in future to the said defendants by any contract now existing, or which existed at the time of the service of said garnishment; and that said Phelan & Delamore have not in their possession or under their control any personal or real property, or
35 things in action belonging to the said defendants, A. T. Stewart & Co.

And garnishees having fully answered, prays to be discharged, with their costs.

E. J. DELAMORE.

Subscribed & sworn to before me this 7th day of November, 1874.
JAMES M. LOWRY,
Clerk Circuit Court, Mobile Co., Ala.

Answer of garnishee, E. P. Herpeis.

THE STATE OF ALABAMA,
Mobile County:

In the circuit court of Barbour County, Alabama.

MEYER SONNEBORN
vs.
A. T. STEWART & CO., DEFENDANTS, AND
E. P. Herpies & Co., garnishees.

And now, on this day, comes E. P. Herpeis, one of the firm of E. P. Herpeis & Co., the garnishees in the above-stated case, and, for answer to said garnishment, upon oath, says that, at the time of the service of the garnishment, and at this time, the said E. P. Herpeis & Co. were, and are, indebted to the defendants in the sum of one thousand four hundred and fifty-one & $\frac{85}{100}$ dollars; that said E. P. Herpeis & Co. will not be indebted in future to the said defendants, by any contract now existing, or which existed at the time of the service of said garnishment; and that they have not in their possession or under their control any personal or real property, or things in action, belonging to said
36 A. T. Stewart & Co., and garnishees having fully answered, prays to be discharged, with their costs.

E. P. HERPEIS.

Subscribed & sworn before me this 7th day of Nov., 1874.
JA'S M. LOWRY.
Clerk of Circuit Court Mobile Co., Ala.

Answer of William Frobichstein, garnishee.

THE STATE OF ALABAMA,
Mobile County:

Circuit court Barbour Co., fall term, 1874.

M. SONNEBORN
vs.
A. T. STEWART & CO., DEFT'S, AND WILLIAM Frobichstein, garnishee.

And now on this day comes Whitfield Turner, bookkeeper for W'm Frobichstein, garnishee in the above stated case, and for answer to the writ of garnishment served upon William Frobichstein, upon oath says, that garnishee was indebted to the above named defendants at the time of the service of the garnishment in the above stated cause, at the time of making his answer hereto, and that he will not be indebted in future to the said defendants by a contract then existing, or at the time of this summons; and that said garnishee Frobichstein has not in possession, or under his control, personal or real property, or things in action belonging to the said A. T. Stewart & Co. Garnishee further an-
37 swered that he is indebted to the defendants in the sum of two thousand five hundred and ninety-six $\frac{31}{100}$ dollars, as appears by the statement hereto attached.

And garnishee having fully answered, prays to be discharged, with his reasonable costs in this behalf expended.

WHITFIELD TURNER,
Bookkeeper.

Subscribed & sworn to before me this 9th day of Nov., 1874.
JA'S M. LOWRY,
Clerk of Circuit Court Mobile Co., Ala.

And at the fall term, 1874, of the circuit court of Barbour County, the defendants, by attorney, made the following motion, affidavit and bond, for the removal of this cause to the United States circuit court at Montgomery, Ala.

Motion.

MEYER SONNEBORN
vs.
A. T. STEWART & CO. ET AL. } 950.

Motion of the defendants for the removal of this cause from the State court to the circuit court of the United States, for the middle district of Alabama, on the grounds set forth in the petition now on file in the clerk's office.

SHORTER & BRO.,
For Motion.

To S. H. DENT.

38 *Petition.*

MEYER SONNEBORN
vs.
A. T. STEWART & CO. ET AL. } Suit for damages.

In the circuit court of Barbour County, Alabama, fall term, 1874.

To the Hon. H. D. Clayton, judge of said court:

1st. The petition of A. T. Stewart & Co., the defendants in the above entitled cause, shows that an action has been brought in this court against the petitioners by the plaintiff above named.

2nd. That this action is brought by said plaintiff to recover of the defendants damages alleged to have been sustained by him in consequence of certain proceedings in bankruptcy instituted by your petitioners against said plaintiff in the United States district court, at Montgomery, Alabama.

3rd. That the amount of damages claimed by said plaintiff of said defendants in his said suit, in this court, exceeds the sum of five thousand dollars, to wit, the sum of dollars.

4th. That the petitioners are all citizens of the State of New York, and reside therein.

5th. That the plaintiff is a resident citizen of the said county of Barbour and State of Alabama.

6th. That the defendants, your petitioners, have reason to, and do believe, that from prejudice or local influence, they will not be
39 able to obtain a fair and impartial trial in the said circuit court of Barbour County.

7th. That the petitioners now enter their appearance in this action, but have not done so heretofore.

8th. That the petitioners hereby offer good and sufficient surety for their entering in the next circuit court of the United States for the middle district of Alabama, at Montgomery, on the first day of its session, copies of the process against them in this action; and also for their appearance at said term of the said circuit court of the United States to defend said cause.

Your petitioners therefore ask that the said cause may be removed for trial into the next circuit court of the United States for the middle district of Alabama, to be held at Montgomery, the said county of Barbour being included in the said district, pursuant to the provisions of the said statutes of the United States in such cases made and provided; and that this court do accept the surety offered by your petitioners, as aforesaid, and do proceed no further in said cause, and for such further and other order or relief in the premises as may be just.

A. T. STEWART & CO.,
By their attorney, ELI S. SHORTER.

40 *Affidavit.*

THE STATE OF ALABAMA,
Barbour County:

Before me, a justice of the peace in and for said county & State, personally came Eli S. Shorter, who on oath says that he is the attorney and agent of A. T. Stewart & Co., of New York City, for the defense of a certain suit now pending in Barbour County circuit court, wherein Meyer Sonneborn is plaintiff and said A. T. Stewart & Co. are

defendants, and that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to these matters he believes it to be true.

ELI S. SHORTER.

Sworn to & subscribed to before me this 21st day of January, 1875.

G. L. COMER,
N. P. & ex off. J. P.

Bond.

THE STATE OF ALABAMA,
Barbour County:

Know all men by these presents, that we, A. T. Stewart & Co., of the city and State of New York, and Eli S. Shorter and Henry R. Shorter, of the said county of Barbour, are held and firmly bound unto
41 Meyer Sonneborn, his administrators and assigns, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Meyer Sonneborn, his administrators and assigns, for which payment well and truly to be made we hereby jointly and severally bind ourselves, our heirs, our administrators, and assigns, firmly by these presents. Sealed with our seals this the 21st day of January, A. D. 1875.

The condition of the above obligation is such that whereas the above-named Meyer Sonneborn has commenced an action in the circuit court of Barbour County, Alabama, against the said A. T. Stewart & Co.; and whereas, further, the said A. T. Stewart & Co. have entered their appearance in said action in said court, and at the same time have filed their petition for the removal of the cause into the next circuit court of the United States for the middle district of Alabama, to be held at Montgomery:

Now the condition of the above obligation is such that if the said A. T. Stewart & Co. shall enter in said United States circuit court, on the first day of next session, copies of the process against them in said cause, and shall also then and there appear to defend said suit,
42 then these presents and obligation shall be void, or otherwise to remain in full force and effect.

A. T. STEWART & CO., [SEAL.]
By their att'ys, SHORTER & BRO.
ELI S. SHORTER. [SEAL.]
HENRY R. SHORTER. [SEAL.]

Approved January 21st, 1875.
[SEAL.]

H. D. CLAYTON,
Circuit Judge.

Order of court removing cause.

MEYER SONNEBORN
vs.
A. T. STEWART & CO. ET AL.

Circuit court, January term, 1875. January 21st, 1875.

A petition having been filed by the defendants in this cause at the time of entering their appearance herein, on the day of January, 1875, praying for the removal thereof into the circuit court of the

United States for the middle district of Alabama, at Montgomery, pursuant to the statutes in the United States in such cases made and provided, and the said petitioners having offered good and sufficient security, pursuant to the directions thereof and as required by the said statute, now, on motion of Mess'rs Shorter & Brother, of counsel for the petitioners, and after hearing the counsel for the plaintiff, who interposes no objections to the granting of said petition, it is declared that it is made to appear to the satisfaction of the court that the present suit is commenced in this court by a citizen of the State of Alabama, against citizens of another State, and that the matter in dispute exceeds five hundred dollars, exclusive of costs; and it is hereby further declared and ordered that this court accept the surety offered by the petitioners, and that the said cause be removed for trial into the next circuit court of the United States, to be held for the middle district of Alabama, at Montgomery, pursuant to the said statutes, and that this court do proceed no further therein, and that all proceedings in this court in the said cause be and the same is hereby stayed.

43

Clerk's certificate.

THE STATE OF ALABAMA,
Barbour County:

I, Jno. C. McNab, clerk of the circuit court in and for the county of Barbour, State of Alabama, do hereby certify that the foregoing pages, numbered from one to twenty, inclusive, contain a full and complete transcript of the proceedings and record of a certain cause which was pending in said court, wherein Meyer Sonneborn is plaintiff and A. T. Stewart & Co. defendants, as the same were of record and on file in my office; and that an order was granted by the judge of this circuit for the removal of this cause to the United States circuit court for the middle district of Alabama, to be held at Montgomery, Alabama; all of which I hereby certify.

44

Witness my hand and seal of office, at Clayton, this the 24th day of February, A. D. 1875.

[SEAL.]

JNO. C. McNAB,
Clerk Circuit Court, Barbour Co., Ala.

Filed March 11th, 1875.

J. W. DIMMICK, *Clerk.*

Additional agreement of counsel.

MEYER SONNEBORN
vs.
A. T. STEWART & CO.

Suit brought in circuit court of Barbour County, Alabama, and transferred by defendants to the circuit court of the United States for the middle district of Alabama.

In this case it is agreed that the complaint written by the counsel of the plaintiff and delivered to the counsel of the defendants, although not embraced in the transcript of the record and proceedings in the cause, filed by the defendant under the act of Congress, shall, to-

gether with the pleas of defendants attached thereto, be made and treated as a part of the record in said cause, and taken and
45 considered as the complaint filed in said cause in said State court, filed in due time by said plaintiff, and the said complaint is by this agreement considered as having been copied and certified by the clerk of said State court, as part of said transcript, and shall in all respects be considered as the complaint of the plaintiff filed in said cause within due and legal time.

It is also agreed that all the original papers in, or any transcript thereof in the supreme court of the State, shall be read by either party as evidence in this cause, so far as the same is legally admissible, or any issue involved in said cause, the same as though evidence of the contents of said original papers were offered to be proved by a transcript thereof by the proper officer under the act of Congress or any other law allowing a transcript of the same to be read in evidence.

The latter part of this agreement refers to the case of A. T. Stewart & Co. vs. Meyer Sonneborn, in the circuit court of Barbour County, Alabama, brought to recover the debt alleged to be due by Sonneborn to Stewart & Co., and on which the proceedings in bankruptcy were founded.

And this agreement shall and does also embrace all the original
46 papers, orders, and proceedings in the bankrupt proceedings of A. T. Stewart & Co. against said Sonneborn in the district court of the United States for the middle district of Alabama, at Montgomery, referred to in complaint of said Sonneborn in this case.

SHORTER & BROTHER,
Att'ys for Defendants.
J. L. PUGH,
Att'y for Plaintiff.

Filed this 11th day of March, A. D. 1875.
J. W. DIMMICK, *Clerk.*

TUESDAY, *May 25th*, 1875.

Court convened pursuant to adjournment. Present, the Hon. Joseph P. Bradley, associate justice of the Supreme Court of the United States, and the Hon. John Bruce, judge of the district court of the United States, for the State of Alabama.

THURSDAY, *May 27th*, 1875.

MEYER SONNEBORN
vs.
A. T. STEWART & CO.

Court convened pursuant to adjournment. Present as yesterday.
During the examination of witnesses in this cause, court adjourned until to morrow morning at 10 o'clock.

47 SATURDAY, *May 29th*, 1875.

MEYER SONNEBORN
vs.
A. T. STEWART & CO.

Court convened pursuant to adjournment. Present as yesterday.
Came the parties by attorneys, and thereupon came a jury of twelve

good and lawful men, to wit, W'm B. Jackson and eleven others, who being duly elected, tried, and sworn, well and truly to try the issue joined between the parties, on their oaths do say, that they find for the plaintiff, and assess his damages at twenty-one thousand dollars.

It is therefore considered by the court that said plaintiff recover of said defendants the said sum of twenty-one thousand dollars, and the costs in this behalf sustained, for which let execution issue.

Motion for new trial.

MEYER SONNEBORN
vs.
A. T. STEWART & Co.

Motion is made in this case to set aside the verdict, and for a new trial upon the grounds.

1st. Misconduct of one of the jurymen in leaving the jury-room
48 and conversing with people outside relative to the deliberations of the jury.

2nd. On the ground that the damages were excessive and not warranted by the evidence, and that court misdirected jury as to the law.

J. T. HOLTZCLAW &
ELI S. SHORTER,
For Mot on.

To Mess'rs RICE & WATTS,
Att'ys for Pl'ff.

Affidavit of J. W. Dimmick, John Frey, and W. H. Dresser.

M. SONNEBORN
vs.
A. T. STEWART & Co.

In U. S. circuit court at Montgomery, Alabama. May term, 1875.

Comes Joseph W. Dimmick, W. H. Dresser, and John Frey, who, being duly sworn, on oath say that affiants were at the office of the clerk of the U. S. circuit court on Saturday evening, May 29th, after the jury had retired to consider their verdict in the case of Meyer Sonneborn vs. A. T. Stewart & Co., and had been placed in the jury-room by the United States marshal. While affiants were in said office, James E. Marshall, one of the jurors in said cause, came into said clerk's office and said, "I want some ice. We shall be there over Sunday, as we can't agree. We stand ten to two; one of the two is a white man,
49 the other a negro"; said Marshall then asked that some one should go into the jury-room and talk to them, saying that was the way they did in the city court when they had a jury that could not or would not agree. He further asked the clerk of said court to go in and tell the jury they would be kept over Sunday if they did not agree, which the clerk refused to do. Shortly afterwards said Marshall left the clerk's office, and affiants did not see him again till the jury came in with their verdict. At the time said Marshall came into the office a bailiff came with him and went out with him.

J. W. DIMMICK.
W. H. DRESSER.
JOHN FREY.

Sworn to & subscribed before me June 1st, 1875.

LAWRENCE WORRALL,
United States Commissioner in and for the Middle District of Alabama.

Filed June 1st, A. D. 1875.

J. W. DIMMICK, *Clerk.*

Affidavit of Rice, Smith, and Frazer.

M. SONNEBORN
vs.
A. T. STEWART & CO.

In U. S. circuit court at Montgomery, Alabama. May term, 1875.

The undersigned were members of the jury which tried the
50 above-entitled cause at the May term, 1875, of said U. S. court, and have heard read the affidavit of J. W. Dimmick, W. H. Dresser, and John Frey, which, it is understood, defendants will use in support of their application for new trial.

The undersigned state that at no time during the deliberations of said jury, after they had been charged and retired to make up their verdict, was there any division upon the question whether the plaintiff should recover; that all the jurors, from the beginning of their said deliberations after the charge of the court, agreed that the plaintiff was entitled to recover; that the only division between the jurors at any time during said deliberations was as to the amount the plaintiff ought to recover; that many sums were voted on by the jury without unanimity; that at last, about 11 o'clock at night (p. m.) or afterwards, and several hours after they had retired (the time of their retirement being about 5 or 5½ o'clock p. m.), the sum of twenty-one thousand dollars was proposed, and voted on deliberately and with unanimity by the jury as the amount plaintiff ought to recover; and all the jurors in their room evidenced their approval of that sum as the amount plaintiff should recover
51 in writing; and then the verdict as rendered in said court was made out and signed by the foreman, and agreed to by all of the jurors, and then carried into and delivered to the clerk of the court in accordance with the agreement of the attorneys of the parties to the effect that the verdict, when agreed on by the jury, should be so delivered.

H. C. RICE.
E. T. SMITH.
his
N. + FRAZER.
mark.

Sworn & subscribed to before me this 2nd day of June, A. D. 1875.

J. W. DIMMICK, *Clerk.*

Filed this 2nd day of June, A. D. 1875.

J. W. DIMMICK, *Clerk.*

Affidavit of J. E. Marshall.

M. SONNEBORN
vs.
A. T. STEWART & CO.

In U. S. circuit court at Montgomery, Alabama. May term, 1875.

Affiant states that he was one of the jurors in the above-entitled cause

tried at said term of said court; that he has read the affidavit of Dimmick, Dresser, and Frey, which, it is understood, will be relied on by defendants in their application for new trial: that the remarks imputed to him (affiant) in that affidavit were made in the presence of the deputy marshal who had charge of affiant, and in the presence of
52 the clerk and deputy clerk of said court, and not in the presence or hearing of any other juror in said case (as affiant believes or recollect), and whilst affiant was trying to get some ice, and were made in the clerk's office to which affiant had gone (with and under said deputy marshal), for no other purpose than to get ice. About an hour after said remarks were so made, the jury in their room (separate from the clerk's office) deliberately and unanimously agreed upon twenty-one thousand dollars damages for plaintiff as their verdict; and the verdict was made out for that sum, signed by the foreman, assented to by all the jurors, and carried and delivered in the presence of all the jurors to the clerk of the court, under an agreement of the attorneys of the parties to the effect, as affiant understood, that the verdict when agreed on by the jury should be so delivered to the clerk.

Affiant says that the verdict so rendered or delivered to the clerk was deliberately agreed to by all the jurors in the case.

J. E. MARSHALL.

Sworn & subscribed to before me this 2nd day of June, A. D. 1875.

J. W. DIMMICK, *Clerk.*

Filed this 2nd day of June, A. D. 1875.

J. W. DIMMICK, *Clerk.*

53 *Judgment refusing new trial.*

MONDAY, *July 19th*, 1875.

Present, the Hon. John Bruce, judge of the district court of the United States for the middle district of Alabama.

MEYER SONNEBORN }
vs.
A. T. STEWART & CO. }

This cause came on to be heard on motion of defendants for a new trial; after argument had, and due consideration by the court, the motion was dismissed.

Agreement of counsel.

MEYER SONNEBORN }
vs.
A. T. STEWART & CO. }

It is agreed that counsel for defendants shall have twenty days from date hereof to prepare his bill of exceptions in this cause, May 29th, 1875.

DENT & PUGH, &
RICE & WATTS,
Atty's for Pl'ff.
SHORTER & BRO. &
J. T. HOLTZCLAW,
For Defts.

Filed May 29th, A. D. 1875, in open court.

J. W. DIMMICK, *Clerk.*

54 *Agreement of counsel to have bill of exceptions signed in vacation.*

MONTGOMERY, ALA., *July 8th*, 1875.

MEYER SONNEBORN
vs.
A. T. STEWART & CO.

U. S. circuit court.

In this case we agree that the bill of exceptions may be signed in vacation, just the same as in term time, and it may appear in the body of it as signed in term time. If we cannot agree with the counsel for the defendants on it, the presiding judge will determine between us.

PUGH, DENT, RICE & WATTS,
For Plaintiff.

Filed this 8th day of July, A. D. 1875.

J. W. DIMMICK, *Clerk.*

55 *Bill of exceptions.*

In the circuit court of the United States for the middle district of Alabama. Spring term, A. D. 1875.

MEYER SONNEBORN
vs.
A. T. STEWART & CO.

Be it remembered that at the present term of said court the above-stated cause came on for trial upon the issues joined therein, when the case was submitted to a struck jury, empannelled under the statute of the State of Alabama.

After reading the complaint or declaration filed by the plaintiff, and the defendants' plea thereto, the plaintiff introduced, as evidence to support his action, the original petition in bankruptcy filed by the defendants, A. T. Stewart & Co., against Meyer Sonneborn, on 15th day of August, 1873, praying to have said Sonneborn declared an involuntary bankrupt, upon the ground that he was indebted to said defendants, and that he had committed an act of bankruptcy, under the bankrupt law passed by the Congress of the United States, by procuring or suffering his property to be taken on judgement and execution, and that he had transfer'ed his property to Jonas Sonneborn, of the city and State of New York.

The plaintiff then introduced the original application filed in the bankrupt court at Montgomery by the defendants for a writ of seizure of plaintiff's goods; also the original bond for $5,000, given by
56 defendants when the order granting the writ of seizure was made, and the return of the marshal, showing that he had closed up plaintiff's store-house in Eufaula, Alabama, and seized his stock of merchandise.

These original papers in bankruptcy were used as evidence by consent of counsel, and are in words and figures as follows, to wit:

In the district court of the United States for the middle district of Alabama.

In the matter of Meyer Sonneborn, against whom a petition for adjudication of bankruptcy was filed on the 15th day of August, A. D. 1873. In bankruptcy.

Deposition as to petitioning creditor's claim.

MIDDLE DISTRICT OF ALABAMA, *ss:*

At Montgomery, the 15th day of August, A. D. 1873, John D. Roquemore, of Eufaula, in the county of Barbour and State of Alabama, one of the attorneys of A. T. Stewart & Company, creditor, &c., being duly sworn and examined at the time and place above mentioned, upon his oath says that the said Meyer Sonneborn was, on and before the 15th day of August, A. D. 1873, and still are, justly and truly in-
57 debted unto the said A. T. Stewart and Company, whose agent and attorney is this said deponent, in the sum of twenty-five hundred and sixty-five dollars and fifty-four cents, and which said indebtedness arose as follows, that is to say: By the rendition of two judgments against one E. Leipzeiger and the said Meyer Sonneborn, one in the superior court of the city of New York, for the sum of sixteen hundred and five $\frac{34}{100}$ dollars, on the 5th day of June, A. D. 1867, and the other against said E. Leipziger & the said Meyer Sonneborn, in the supreme court of the State of New York, in the city of New York, for the sum of nine hundred and sixty $\frac{20}{100}$ dollars, on the 19th day of August, A. D. 1869, both of which judgments were rendered in favor of said A. T. Stewart & Co., and remain wholly unpaid.

JNO. D. ROQUEMORE.

Subscribed and sworn to before me this 15th day of August, A. D' 1873.

JOS. W. BURKE,
Register in Bankruptcy.

In the district court of the United States for the middle district of Alabama.

In the matter of Meyer Sonneborn, bankrupt. In bankruptcy.

58 SOUTHERN DISTRICT OF NEW YORK, *ss:*

At the city, county, and State of New York, on the 1st day of July, A. D. 1873, before me, John A. Shields, U. S. commissioner for said district, came William Libbey, of the city, county, and State of New York, and made oath and says that he is a member of the firm of A. T. Stewart & Co., of said city, which firm is composed of Alexander T. Stewart, George Fox, and deponent, and that the said Meyer Sonneborn, the person against whom a petition for adjudication of bankruptcy has been filed, at and before the filing of the said petition, and still is, justly and truly indebted to this deponent's said firm in the sum of two thousand five hundred and sixty-five $\frac{54}{100}$ dollars, with interest on $1,605.34 from the 5th day of June, 1867, and interest on $960.20 from August 19th, 1869, on two certain judgments recovered by Alexander T. Stewart, Francis Warden, George Fox, and William Libbey, as partners, doing business under the firm-name of A. T. Stewart & Co., against Edward Leipziger and said Meyer Sonneborn, partners, doing

business under the firm-name of E. Leipziger & Co., one in the superior court of the city of New York on the 5th day of June, 1867, for the sum of $1,605.34, and the other in the supreme court of the State of New York, in the county of New York, on the 19th day of August, 1869, for the sum of $960.20, certified transcripts of which judgments are hereto attached, marked "Exhibits A and B."

That on the 27th day of January, 1873, the said Francis Warden died, leaving said Alexander T. Stewart, George Fox, and William Libbey surviving partners of said firm of A. T. Stewart & Co., and sole owners of said judgments.

That the consideration of said judgments was goods sold and delivered by deponent's said firm to said E. Leipziger & Co.; that no payments have been made on account thereof, for which said sum of two thousand five hundred and sixty-five $\frac{34}{100}$ dollars, and interest as aforesaid, or any part thereof, this deponent says that he has not, nor has any member of his said firm, nor any person by its order, or, to this deponent's knowledge or belief, for its use had or received any manner of satisfaction or security whatever.

And this deponent further says, that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain, or agreement, express or implied, has been made or entered into by or on behalf of this deponent, or by any member of his said firm, to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt; or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent or either of his partners for assignee, or any action on the part of this deponent or his said firm, or any other person in the proceedings under said act, has been, is, or shall be in any way affected, influenced, or controlled.

WILLIAM LIBBEY,
Deposing Creditor.

Subscribed and sworn to before me this 1st day of July, A. D. 1873.
[SEAL OF COMMISSIONER.] JOHN A. SHIELDS,
U. S. Commissioner for Southern District of New York.

EXHIBIT A.

Names of parties against whom judgments have been obtained: Leipziger, Edward; Sonneborn, Meyer.

Names of parties in whose favor judgments have been obtained: Alexander T. Stewart, Francis Warden, George Fox, William Libbey.

Damages and costs, $960.20.

Filed June 5, 1869, at 2.38 p. m.

H. H. Rice, attorney.

CLERK'S OFFICE, NEW YORK COUNTY,
New York, June 30, 1873.

I, Charles E. Loew, clerk of the county of New York, do hereby certify that the foregoing is a correct transcript from the docket of judgments kept in my office, of a judgment rendered in the supreme court of the State of New York, for said county.

[SEAL.] CHA'S E. LOEW, *Clerk.*

EXHIBIT B.

Names of parti's against whom judgments have been obtained: Leipziger, Edward; Sonneborn, Meyer.

Names of parties in whose favor judgments have been obtained:
61 Alexander T. Stewart, Francis Warden, George Fox, William Libbey.

Damages and costs, $1,605.34.
Filed June 5, 1867, at 12.35 p. m.
H. H. Rice, attorney.

OFFICE OF THE CLERK OF THE SUPERIOR
COURT OF THE CITY OF NEW YORK,
June 30th, 1873.

I certify that the foregoing is a correct transcript from the docket of judgments kept in my office.

THOMAS BOLSE, *Clerk.*

In the district court of the United States for the middle district of Alabama.

Deposition of witness to act of Sonneborn's bankruptcy.

In the matter of Meyer Sonneborn, against whom a petition for adjudication of bankruptcy was filed on the 15th day of August, A. D. 1873. In bankruptcy.

MIDDLE DISTRICT OF ALABAMA, *ss:*

At Montgomery, the 15th day of August, A. D. 1873, John D. Roquemore, of Eufaula, in the county of Barbour and State of Alabama, witness, being duly sworn and examined at the time and place above mentioned, upon his oath says that Meyer Sonneborn, being bankrupt, or insolvent, or in contemplation of bankruptcy or insolvency, procured or suffered his property to be taken on legal process with intent to give a preference to one or more of his creditors, in this:

That the said Meyer Sonneborn being insolvent or in contem-
62 plation of insolvency or bankruptcy did, on the 12th day of June, 1873, permit the recovery of a certan judgment against him by default in the city court of Eufaula, in thecounty of Barbour and State of Alabama, in favor of one Jonas Sonneborn, for the sum of six thousand nine hundred and forty-four $\frac{43}{100}$ dollars, upon which judgment an execution has been issued & placed in the hands of the sheriff of the said county of Barbour, as affiant is informed and believes, and as will more fully appear from a paper hereto attached, marked "Exhibit A."

JOHN D. ROQUEMORE.

Subscribed and sworn to before me this 15th day of August, A. D. 1873.

JOS. W. BURKE,
Register in Bankruptcy.

EXHIBIT A.

THE STATE OF ALABAMA,
Barbour County:

At the June term of the Eufaula city court, a court held for the

city of Eufaula, in said county, Jonas Sonneborn brought his suit by summons and complaint against Meyer Sonneborn, which said summons and complaint are in the words and figures following, to wit:

THE STATE OF ALABAMA,
Barbour County:

To any sheriff of the State of Alabama, greeting:

You are hereby commanded to summon Meyer Sonneborn to appear at the city court of Eufaula, to be holden for said county at the
63 place of holding the same, then and there to answer the complaint of Jonas Sonneborn.

Witness my hand and seal, this the 12th day of May, 1873.
A. T. SPENCE, *Clerk.*

Eufaula city court, June term, 1873.

Jonas Sonneborn, plaintiff, versus Meyer Sonneborn, defendant.

Plaintiff claims of the defendant the sum of six thousand eight hundred and seventy-two and $\frac{60}{100}$ dollars, due on a foreign judgment which was rendered in favor of plaintiff against defendant and one B. Dittenhoisser, not sued in this action, in the supreme court for the county and city of New York, in the State of New York, on the first day of May, inst., 1873. And plaintiff alleges that said court is a court of common law and a court of record, and had jurisdiction of the person and subject-matter of said suit, and full power and authority to render said judgment; and that the said judgment is still outstanding against defendant, unreversed, unannulled and unsatisfied, or any part thereof, and with interest is still due and unpaid.

BUFFORD & DENT,
Pl'ff's Att'ys.

Received in office May 17th, 1873.

I. C. FLOURNOY,
Sheriff,
Per T. D. PATTERSON,
Dep. Sheriff.

Executed by leaving a copy of the within summons and complaint with the defendant, May 17th, 1873.

I. C. FLOURNOY,
Per T. D. PATTERSON,
Dep. Sheriff.

64 JUNE 12, 1873.

JONAS SONNEBORN
vs. } 410.
MEYER SONNEBORN.

Came the plaintiff, by attorney, and defendant, being called, came not, but made default; and, the damages being uncertain, then came a jury of good and lawful men, to wit, T. J. Cannon, foreman, and eleven others, who, upon their oaths, say they assess the plaintiff's damages at six thousand nine hundred and forty-four and $\frac{43}{100}$ dollars. It is therefore considered by the court that the plaintiff recover of the defendant the sum so assessed, and also the cost in this behalf expended, for which execution may issue.

THE STATE OF ALABAMA,
Barbour County:

To any sheriff of the State of Alabama, greeting:

You are hereby commanded that of the goods and chattels, lands, and tenements of Meyer Sonneborn you cause to be made the sum of six thousand nine hundred and forty-four and $\frac{13}{100}$ dollars, which Jonas Sonneborn recovered of him on the 12th day of June, 1873, by the judgment of the city court of Eufaula, held for the county of Barbour, besides costs of suit, and have the same to render to the said Jonas Sonneborn, and make return of this writ and the execution thereof according to law.

Witness my hand, this the 30th day of June, 1873.

A. T. SPENCE, *Clerk.*

Clerk's fees: Writ & copy, 1.55; appearance, 25c.; docketing cause, 20c.; sheriff's return, 25c.; filing pleadings, 20c.; trial, 75c.; entering judgment, 30c.; issuing execution, 50c.; docketing execution, 25c.;
65 sheriff's return, 20c.; complete record, $1.75; bond for costs, 50c. Sheriff: for serving writ, $1.30; executing and returning execution, 25c. Recapitulation: clerk's fees, $6.70; sheriff's, $1.55; county, tax, $2.00; judge's fee, $1.00=$11.25. Issued June 30th, 1873; delivered to sheriff July 3, 1873.

THE STATE OF ALABAMA,
Barbour County:

I, A. T. Spence, clerk of the city court of Eufaula, and keeper of the records and seal of said court, do hereby certify that the foregoing three pages contain a correct transcript of all the proceedings on file or of record in my office, in the case therein stated, wherein Jonas Sonneborn is plaintiff and Meyer Sonneborn defendant.

Given under my hand and seal of office, this the 13th day of August, 1873.

[SEAL.] A. T. SPENCE, *Clerk.*

Petition to have Sonneborn declared a bankrupt.

To the Hon. Richard Busteed, judge of the district court of the United States for the middle district of Alabama.

The petition of Alexander T. Stewart, George Fox, and William Libbey, copartners, doing business at the city and county of New York, in the State of New York, under the firm-name of A. T. Stewart & Co., respectfully shows, that they are creditors of Meyer Sonneborn, who, for a period of twelve months next preceding the date of the filing of this petition, has resided at Eufaula, in the county of Barbour and
66 State of Alabama, district aforesaid. That your petitioners' demand is provable against the said Meyer Sonneborn, in accordance with the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867. That they believe that said Meyer Sonneborn owes debts to an amount exceeding the sum of three hundred dollars. That your petitioners' demand exceed' the amount of two hundred and fifty dollars; and that the nature of your petitioners' demand against the said Meyer Sonneborn is as follows, to wit, that, on the 5th day of June, 1867, at the city of New York aforesaid, Alexander T. Stewart,

Francis Warden, George Fox and William Lebbey, then copartners, doing business under the firm-name of A. T. Stewart & Co., duly recovered in the superior court of the city of New York a judgment against E. Liepziger and said Meyer Sonneborn, for the sum of sixteen

hundred and five $\frac{34}{100}$ dollars. And that on the 19th day of August, 1869, at said city of New York, the said Alexander T. Stewart, Francis Warden, George Fox and William Libbey, as such copartners, duly recovered in the supreme court of the State of New York, in said city of New York, a certain other judgment against said E. Leipziger and Meyer Sonneborn, for the sum of nine hundred and sixty $\frac{20}{100}$ dol-
67 lars. That said judgments were founded upon the sale and delivery of goods and merchandize by said A. T. Stewart & Co. to said E. Leipzeiger and Meyer Sonneborn of the value and for the amounts therein mentioned, less interest and costs of suit. The executions upon said judgments have been duly issued and returned unsatisfied. That no part of said judgments have been paid, and the same still remains wholly unpaid, unsatisfied. That shortly after the sale and delivery of the goods and merchandise, the said Meyer Sonneborn removed from the city of New York to Mansfield, Ohio, and from thence to Eufaula, in the State of Alabama, his present place of residence and business. That on or about the 4th day of October, 1869, an action was commenced in the circuit court of Barbour County, Alabama, by said A. T. Stewart & Co. against said Meyer Sonneborn upon said judgments, which action is still pending in said circuit court, and undetermined. That on the 27th day of January, 1873, the said Francis Warden died, leaving said Alexander T. Stewart, George Fox, and William Libbey surviving partners of said firm of A. T. Stewart & Co., and sole owners of said judgments.

And your petitioners further represent that within the six calendar months next preceding the date of this petition, the said Meyer
68 Sonneborn did commit an act of bankruptcy within the meaning of said act, to wit, in that said Meyer Sonneborn, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, has procured or suffered his property to be taken on legal process with intent to give a preference to one or more of his creditors in this: That said Meyer Sonneborn, being insolvent, or in contemplation of insolvency or bankruptcy, did, on the 12th day of June, 1873, suffer and permit the recovery of a certain judgment against him by default in the city court of Eufaula, in the county of Barbour, and State of Alabama, in favor of one Jonas Sonneborn, for the sum of six thousand nine hundred and forty-four $\frac{13}{100}$ dollars, upon which judgment an execution has been issued and a levy duly made, as your petitioners are informed and believe.

Wherefore your petitioners pray that he, the said Meyer Sonneborn, may be declared a bankrupt, and that a warrant may be issued to take possession of his estate; that the same may be distributed according to law, and that an injunction may issue by this honorable court restraining the said Meyer Sonneborn and any other person or persons in the mean time from making any transfer or disposition of any part of the property or estate of said Meyer Sonneborn not excepted by the acts of Congress and the several amendments thereto aforesaid from the operation thereof, and from any interference therewith, and such further proceedings may be had thereon as the law in such cases prescribes.

A. T. STEWART & CO.,
Pr. WILLIAM LIBBEY.

69 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Libbey, do hereby make solemn oath that I am one of the partners of the firm of A. T. Stewart & Co., the petitioners named in the foregoing petition; that the statements contained in the said petition subscribed by me with the name of said firm of A. T. Stewart & Co., are true, so far as the same are stated of the knowledge of the petitioners, and that those matters which are stated therein on information and belief are true according to the best of my knowledge, information, and belief.

WILLIAM LIBBEY.

Subscribed and sworn before me this 1st day of July, 1873.
[SEAL.] JOHN A. SHIELDS.
U. S. Commissioner Southern New York.

I have examined the petition and proof in this matter, and certify the same correct in form. Let an order to show cause issue returnable August 21st, 1873, at Montgomery, according to the rules and practice of this court.

Montgomery, August 15th, 1873.

JOSEPH W. BURKE,
Register in Bankruptcy.

Filed this 15th day of August, A. D. 1873, *a* 12 m.
E. C. V. BLAKE, *Clerk.*

Petition for injunction and warrant.

District court of the United States, middle district of Alabama.

A. T. STEWART & Co. *vs.* MEYER SONNEBORN. } In bankruptcy.

70 To the honorable Richard Busteed, judge of the district court of the United States for the middle district of Alabama.

Your petitioners, A. T. Stewart and Company, a firm composed of Alexander T. Stewart, George Fox, and William Libbey, doing business in the city of New York, county and State of New York, respectfully represent unto your honor—

1st. That as such partners aforesaid they own a debt of over three hundred dollars against Meyer Sonneborn, who is doing business in Eufaula, Alabama in said district; that as such creditors they have heretotore, to wit, at 12 o'clock m. on this the 15th day of August, 1873, filed their petition in this honorable court, sitting as a court of bankruptcy, against said Meyer Sonneborn, alleging that the said Meyer Sonneborn has committed an act of bankruptcy within the meaning of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, to wit, in that the said Meyer Sonneborn being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, procured or suffered his property to be taken on legal process with intent to give a preference to one or more of his creditors; that the said petitioner was duly referred, under the rules of this honorable court, to the proper register for examination and such proceedings thereunder as should seem proper;

that after such reference and examination an order to show cause
71 why the prayer of the said petition should not be granted was duly issued to said defendant on said 15th day of August, 1873, at the hour of m., returnable before the said register in bankruptcy, at Montgomery, within said middle district of Alabama, on the 21st day of August, A. D. 1873.

2nd. And your petitioners further represent that the said Myer Sonneborn is about to leave the middle district of the State of Alabama, and your petitioners believe that the said Meyer Sonneborn is about to remove his goods and chattels from the said district, or make such disposition of the same as will prevent their coming into the hands of such assignee as may be appointed for the estate of said Sonneborn. Your petitioners refer to a printed notice hereto attached, marked Exhibit A, and aver that on or about the 1st day of August, 1873, the said Meyer Sonneborn caused to be distributed in the said city of Eufaula large numbers of copies of said notice, and that on and since that date the said Sonneborn, according to his representations, has been offering and selling from his stock of merchandise in said Eufaula large quantities of goods at and below New York cost. Your petitioners further aver that said Sonneborn has cash deposited with Edward B. Young & Son, J. G. L. Martin & Son, or John McNab, who reside in said Eufaula, either in his own name or in the name of one Price whose given name is unknown to your petitioners, but who is the agent of said Sonneborn, who has his stock of merchandise now in his charge, and who has had said
72 stock in his charge since about the 1st day of August, 1873; and they believe if the said Edward B. Young & Son, J. G. L. Martin & Son, and John McNab, and the said Price are not restrained by the injunction of this honorable court from making any transfer or other disposition of whatever part of said property of the said Sonneborn's they may have under their control, and from any interference therewith, the said Sonneborn will make such disposition of the same as will prevent the same from coming to the hands of such assignee as may be appointed for the estate of said Sonneborn.

Wherefore your petitioners pray that an injunction may issue directed to said Meyer Sonneborn, Edward B. Young and Son, J. G. L. Martin and Son, John McNab, and the said Price, and the agents and attorneys of each of them, restraining them and each of them and all other persons from removing, disposing of, or in any manner interfering with the stock of merchandise of said Sonneborn in said city of Eufaula, or any other property or assets belonging to said Sonneborn or claimed by him or any person for him, or any portion of the same.

And also that a warrant may issue directed to the marshal of said district as messenger, commanding him forthwith to take possession provisionally of all the property and effects of the debtor, and safely keep the same until the further order of this court, and your petitioners will, as in duty bound, ever pray, &c.

A. T. STEWART & CO.,
Petitioners,
By SHORTER & BROTHER AND
WOOD & ROQUEMORE,
Attorneys.

73 Before me, Joseph W. Burke, register in bankruptcy in and for the middle district of Alabama, personally came John D. Roquemore, one of the attorneys for A. T. Stewart & Co., the petitioners above, who, being sworn says that the averments in the foregoing

petition are true, according to the best of his knowledge, information, and belief.

JOHN D. ROQUEMORE.

Sworn to and subscribed before me, at Montgomery, Alabama, this the 15th day of August, A. D. 1873.

JOS. W. BURKE,
Register in Bankruptcy, &c.

United States district court for the middle district of Alabama, in bankruptcy.

A. T. STEWART & Co.
versus
MEYER SONNEBORN. } In bankruptcy.

Let the injunction and warrant for provisional seizure of property issue as prayed for in the above petition.

JOSEPH W. BURKE,
Register in Bankruptcy.

EXHIBIT A.

Take notice!

NEW YORK STORE.

I will sell for the next thirty days my entire stock, consisting
74 of dry goods, calicoes, hosiery, goloves, straw-goods; a full line of white goods, such as Swiss, Bishop, and Victoria lawns, striped and plaid cambrics and nainsooks, embroideries, &c.; hats and caps, boots and shoes, at and below New York cost. Call and convince yourself.

M. SONNEBORN,
New York Store.

EUFAULA, *Ala., August 1st*, 1873.

Filed this 15th day of August, A. D. 1873, at 2 p. m.

E. C. V. BLAKE,
Clerk.

UNITED STATES OF AMERICA.

District court of the United States for the middle district of Alabama, in bankruptcy.

The President of the United States to the marshal of said district, greeting:

You are hereby commanded to make known to Edward B. Young and Son, J. G. L. Martin and Son, John McNab, and Price, and the agents and attorneys of each of them, and all other persons, that under and by virtue of an order made by the Hon. Richard Busteed, judge of the district court aforesaid, on the application of the plaintiffs on a petition filed by them in said court, in bankruptcy, wherein A. T. Stewart & Co. are plaintiffs and Meyer Sonneborn is defendant, they and each of them and all other persons are enjoined and restrained,

75 until the further order of said court from removing, disposing of, or in any manner interfering with a certain stock of dry goods and general merchandise, held and owned by said Meyer Sonneborn at the time of filing of said petition, in the city of Eufaula, Alabama; and you are further enjoined and restrained until the further order of this court, not remove, dispose of, or in any manner interfere with any moneys or other assets in your possession or under your control, placed there by the said Meyer Sonneborn or one Price, or any other person. Herein fail not, and have this writ, with your endorsement thereon of how you have executed the same, before said district court in bankruptcy, to be held on the 21st day of August, A. D. 1873, at Montgomery.

Witness Hon. Richard Busteed, judge of the court aforesaid, this fourth Monday of May, in the year of our Lord one thousand eight hundred and seventy-three.

Issued the 16th day of August, in the year of our Lord one thousand eight hundred and seventy-three.

Attest:

[SEAL.] E. C. V. BLAKE,
Clerk U. S. District Court, Middle Dist. Ala.

Received August 19th, 1873.

Executed by serving copy of the within injunction on the within-named Edward B. Young and Son, J. G. L. Martin and Son, John McNab, and one Price, who had charge of Meyer Sonneborn's stock
76 of goods in Eufaula, Alabama, on the 16th day of August, 1873, on this the 19th day of August, 1873.

R. W. HEALY,
U. S. Marshal,
P' T. D. PATTERSON
Special Deputy.

Returned and filed this 1st of September, A. D. 1873, @ 9 a. m.
E. C. V. BLAKE, *Clerk.*

Provisional warrant.

UNITED STATES OF AMERICA:

In the district court of the United States for the middle district of Alabama. In bankruptcy.

In the matter of Meyer Sonneborn, against whom a petition for adjudication of bankruptcy has been filed in said court.

MIDDLE DISTRICT OF ALABAMA, *ss:*

To the marshal of said district or either of his deputies, greeting:

Whereas a petition for adjudication of bankruptcy was, on the 15th day of August, A. D. 1873, at 12 o'clock m., filed against Meyer Sonneborn, of the county of Barbour, and State of Alabama; and whereas, further, it is represented by the petition of A. T. Stewart & Co., a creditor of said bankrupt, who have proved their debt, that the stock of goods of said debtor is about to be removed or disposed of so as to prevent the same from coming into the hands of such assignee as
77 may be appointed for said bankrupt estate: Now you are therefore, by virtue of the said several petitions, according to the pro-

visions of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and the amendatory acts thereto, required, authorized, and empowered, as messenger, to take possession of all the estate, real and personal, of said Meyer Sonneborn, debtor, except such as may be by law exempt from the operation of said act, and of all their deeds, books of account, and papers, and to keep the same safely until the issue of said alleged bankruptcy is decided, and until the further order of this court, and have you this warrant, with your doings thereon, before this honorable court, on the 21st day of August, A. D. 1873, @ 11 a. m., in the city and county of Montgomery.

Witness the honorable Richard Busteed, judge of said court, and the seal thereof, at Montgomery, in said district, this 15th day of August, A. D. 1873.

[SEAL.] E. C. V. BLAKE,
Clerk U. S. District Court Middle District Alabama.

Marshal's return.

Received August 16th, 1873.

R. W. HEALY,
U. S. Marshal,
P'r T. D. PATTERSON,
Special Dep.

78 Executed the within provisional warrant of seizure by taking possession of the within-named Meyer Sonnebor''s stock of general merchandise, in the city of Eufaula, Alabama, and by taking possession of all his books and papers found in the store where he had his said stock of general merchandise, on the 16th day of August, 1873.

R. W. HEALY,
U. S. Marshal,
Per T. D. PATTERSON,
Special Deputy.

Returned and filed this 1st day of September, A. D. 1873, @ 9 a. m.
E. C. V. BLAKE, *Clerk.*

Order to show cause.

In the district court of the United States for the middle district of Alabama. In bankruptcy.

In the matter of Meyer Sonneborn, against whom a petition for adjudication of bankruptcy was filed on the 15th day of August, A. D. 1873.

MIDDLE DISTRICT OF ALABAMA, *ss:*

Upon filing proofs sustaining the allegations of the petition aforesaid, it is ordered that the said Meyer Sonneborn do appear at this court, as a court of bankruptcy, to be holden at Montgomery, in the county of Montgomery and State of Alabama, and district aforesaid, on the 21 day of August, A. D. 1873, at 10 o'clock a. m., and show cause,
79 if any there be, why the prayer of said petition should not be granted; and

It is further ordered that a copy of said petition, together with a

copy of this order, be served on said Meyer Sonneborn by delivering the same to him personally, or by leaving the same at his last usual place of abode in said district, at least five days previous to the day herein required for his appearance.

Witness the Hon. Richard Busteed, judge of the said court, and the seal thereof at Montgomery, in said district, on the 15th day of August, A. D. 1873.

[SEAL.] E. C. V. BLAKE,
Clerk of District Court for said District.

Marshal's return on order to show cause.

Received August 16, 1873.

R. W. HEALY,
U. S. Marshal, per T. D. Patterson, Spe. Dep.

Executed by leaving a copy of the within order to show cause upon creditor's petition, at the last usual place of abode in the middle district of Alabama of the within-named Meyer Sonneborn, on the 16th day of August, 1873, and on which day I also served a copy of the creditor's petition to adjudicate said Meyer Sonneborn a bankrupt, by leaving the same at his last usual place of abode, in the middle district of Alabama, I not being able to find said Sonneborn in person.

R. W. HEALY,
U. S. Marshal,
Pr. F. D. PATTERSON,
Special Deputy.

Returned and filed this 1st day of Sept., A. D. 1873, @ 9 a. m.
E. V. C. BLAKE, *Clerk.*

80 *Demand for a jury trial.*

In the district court of the United States for the middle district of Alabama.

IN THE MATTER OF THE PETITION OF A. T. Stewart & Co., creditors, *vs.* MEYER SONNEBORN.	In bankruptcy.

At Montgomery, in said district, on the 21st day of August, A. D. 1873.

MIDDLE DISTRICT OF ALABAMA, *ss:*

And now on this return day for the hearing of said petition, the said Meyer Sonneborn appears and denies that he has committed the act of bankruptcy set forth in said petition, and avers that he should not be declared a bankrupt for any cause in said petition alleged, and he demands that the same may be inquired of by a jury.

Witness the honorable Richard Busteed, judge of the said court, and the seal thereof, at Montgomery, in said district, on the 21st day of August, A. D. 1873.

[SEAL.] E. C. V. BLAKE, *Clerk.*

Filed this 21st day of August, A. D. 1873, @ 11.30 a. m.
E. C. V. BLAKE, *Clerk.*

Denial of bankruptcy.

In the district court of the United States for the middle district of Alabama.

IN THE MATTER OF THE PETITION OF A. T. Stewart & Co., creditors, *vs.* MEYER SONNEBORN, DEFENDANT. } In bankruptcy.

81 At Montgomery, in said district, on the 21st day of August, A. D. 1873.

MIDDLE DISTRICT OF ALABAMA, *ss:*

And now on this return day for the hearing of said petition, the said Meyer Sonneborn appears and denies specifically that he is indebted to the petitioners in the manner and form as set forth in their said petition, and further denies specifically that he is indebted in any manner to said petitioners, or that he was so indebted at any time, either before, or at the time, or since the filing of said petition.

Denies specifically that any judgment was rendered against him in favor of said A. T. Stewart & Co., on the 5th day of June, A. D. 1867, in the superior court of the city of New York, for sixteen hundred and five $\frac{00}{100}$ dollars, or any other sum.

Denies specifically that any judgment ever was recovered against him in said court or in any other court, at said time or any other time, in favor of said A. T. Stewart & Co.

Denies that on the 19th day of August, 1869 or 1867, whichever date it may be, that any judgment was duly recovered in the Supreme Court of the State of New York, in the city of New York, against him, in favor of said A. T. Stewart & Co., for nine hundred and sixty $\frac{00}{100}$ dollars, or any other sum.

Denies specifically that any judgment ever was recovered against him in favor of said A. T. Stewart & Co., in said court or any other court, at said time or at any other time, for said amount or for any other amount.

Denies specifically that said A. T. Stewart & Co. delivered any goods and merchandise to this defendant prior to said 5th June, 1867,
82 and 19th August, 1867 or 1869, or at any other time for which this defendant owes or is indebted to said A. T. Stewart & Co. That he may have purchased goods and merchandise from said A. T. Stewart & Co., but if he did he fully paid and satisfied said A. T. Stewart & Co. therefor at the time of said purchase.

This defendant admits that said A. T. Stewart & Co., about the 4th day of October, A. D. 1869, commenced in the circuit court of Barbour County, Alabama, an action against him, but avers that the amended pleadings which have been filed in said case makes it an action on an account, and not an action upon said pretended judgments. And further avers that he is really and bona fide defending said suit, and that he is advised and believes that his defence is a good one, and goes to the merits of the whole of the demand set up against him by said A. T. Stewart & Co. in said case. He further avers and states that he does not owe said demand to said A. T. Stewart & Co., nor any part thereof. That upon a trial of said case in said circuit court of Barbour County, he recovered a judgment against said A. T. Stewart & Co., but that said judgment was afterwards reversed on appeal in the supreme court of the State of Alabama, and the case remanded for a new trial, but

that he is still bona fide defending said suit, and expects to wholly defeat said suit upon a second trial. That so contingent and uncertain do the said A. T. Stewart & Co. regard said demand, that through Messrs. Shorter & Brother, their attorney in Eufaula, Ala., they have offered repeatedly to compromise said demand in said suit set up
83 for the sum of one thousand dollars. But that this defendant relying on and believing his said defence to said suit would be finally successful, has always refused and still refuses to pay the said sum of one thousand dollars in compromise of said claim, although the original demand is more than twenty-five hundred dollars, besides interest for five or six years, making the total demand up to this time, more than thirty-five hundred dollars.

This defendant further denies that he has within the six months next preceding the filing of said petition committed an act of bankruptcy.

Denies specifically that he is a "bankrupt or insolvent," or that he contemplates "bankruptcy or insolvency."

Denies specifically that he has procured or suffered his property to be taken on legal process, within six months before the filing of said petition, or at any other time. Admits that a judgment was recovered against him in the city court of Eufaula, in the county of Barbour, in favor of Jonas Sonneborn for the sum of six thousand nine hundred and forty-four $\frac{43}{100}$ dollars, and that execution issued on said judgment. But denies most positively that any levy has been made of said execution, or that any of his property has been seized or taken under said execution, and avers that he is making arrangements for the payment and satisfaction of said judgment and execution, and will be able to do so without a levy upon and sale of his said stock of goods.

Denies specifically that he is insolvent or contemplates insolvency, but avers that he has always paid 100 cents in the dollar on all his debts, and is now able to do so, and will continue to do so, unless he is broken up and ruined by the action of said A. T. Stewart & Co. in their
84 attempt to recover of him an unjust and illegal demand.

Therefore he avers that he should not be declared a bankrupt for any cause in said petition alleged, and he demands that the same may be inquired of by a jury.

BUFORD & DENT,
Attorney for Def't,
By S. H. DENT.

Filed this 21st day of August, A. D. 1873, @ 11.30 a. m.
E. C. V. BLAKE, *Clerk.*

Petition to amend original petition.

In the United States district court for the middle district of Alabama, ss:

IN THE MATTER OF THE PETITION OF A. T. Stewart and Company that Meyer Sonneborn be declared a bankrupt. } In bankruptcy.

To the honorable Richard Busteed, judge of said court:

Your petitioners respectfully show unto your honor—

1st. That they reside in the city of New York, in the county of New York, and State of New York, and that on the 15th day of August, A. D. 1873, they filed a petition in this honorable court against the said Meyer Sonneborn to have him declared a bankrupt.

2nd. That said petition was prepared by their attorney in the said city of New York upon information furnished by petitioners' at-
85 torneys in Eufaula, Alabama, and was sworn to by petitioners in said city of New York on the 1st day of July, A. D. 1873, and forwarded at once to their attorneys in the said Eufaula, to be filed by them in this said honorable court; that at the time said petition was prepared, sworn to, and forwarded, as aforesaid, the petitioners were not aware that the said Meyer Sonneborn had committed any other act of bankruptcy than that alleged in their said petition, and that he had changed his place of residence from the said middle district of the State of Alabama.

3rd. That since the said petition was prepared, sworn to, and forwarded by your petitioners, as aforesaid, it has come to the knowledge of your petitioners, through their said attorneys in said Eufaula, on information, that the said Meyer Sonneborn did commit an act of bankruptcy within the meaning of the bankrupt act, within six calendar months next preceding the date of the filing of said petition, to wit, in that he did make an assignment, sale, conveyance, or transfer of his property, rights, or credits to one Jonas Sonneborn, with intent to hinder, delay, and defraud his creditors: that since the said petition was prepared, sworn to, and forwarded by your petitioners, as aforesaid, it has come to the knowledge of your petitioners through their said attorneys in said Eufaula, on information, that said Meyer Sonneborn did commit an act of bankruptcy within the meaning of the bankrupt act, within six calendar months next preceding the date of the filing of your petitioners said petition, to wit, in that he, the said Meyer Sonneborn, being bankrupt or insolvent, or in contemplation of bankruptcy
86 or insolvency, did make to one Jonas Sonneborn a payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, with the intent thereby to give a preference to the said Jonas Sonneborn, one of the creditors of the said Meyer Sonneborn; that since said petition was prepared, sworn to, and forwarded by your petitioners, as aforesaid, it has come to the knowledge of your petitioners through their said attorneys in said Eufaula, on information, that said Meyer Sonneborn did commit an act of bankruptcy within the meaning of the bankrupt act, within six calendar months next preceding the date of the filing of your petitioners said petition, to wit, in that he, the said Meyer Sonneborn, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, did make to one Jonas Sonneborn a payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, with the intent by such disposition of his property to defeat and delay the operations of said act.

4th. And your petitioners further represent that this application for leave to amend the original petition filed by them in this cause has been made within a reasonable time after the discovery of the necessity for amendment.

Wherefore your petitioners pray that they be allowed to amend their said original petition to declare the said Meyer Sonneborn a bankrupt, by alleging that the said Meyer Sonneborn carried on business for the longest period during the six months next immediately preceding the time of the filing of the said original petition at
87 Eufaula, in the county of Barbour and State of Alabama, in the middle district of Alabama, and by adding as acts of bankruptcy having been committed by the said Meyer Sonneborn those matters and things in this your petitioners' petition hereinbefore specified. All of which said proposed amendment will more fully appear by reference to

a paper hereto attached marked "Exhibit A," and which contains said proposed amendment. And that when said proposed amendment is allowed, it be ordered filed, and hereafter treated, considered, and acted upon as a part of the said original petition in this cause, filed to declare the said Meyer Sonneborn a bankrupt; and your petitioners will, as in duty bound, ever pray &c.

HENRY R. SHORTER,
Att'y for A. T. Stewart & Co., Petitioners.

UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I, Henry R. Shorter, one of the attorneys for A. T. Stewart & Co., the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by me are true, so far as they are stated of my own knowledge, and that those matters which are stated therein on information and belief are true, according to the best of my knowledge, information, and belief.

HENRY R. SHORTER,
Att'y for A. T. Stewart & Co., Petitioners.

Subscribed and sworn to before me this 21st day of August, A. D. 1873.

JOS. W. BURKE,
Register in Bankruptcy.

88 Filed this 21st day of August, A. D. 1873, @ 3 p. m.
E. C. V. BLAKE, *Clerk.*

Order allowing petitioners to amend original petition.

In the district court of the United States, middle district of Alabama, in bankruptcy.

IN THE MATTER OF THE PETITION OF ALEXander T. Stewart & Co., creditor,
versus
MEYER SONNEBORN, DEBTOR.

At Montgomery, in said district, on the 21st day of August, 1873.

MIDDLE DISTRICT OF ALABAMA, *ss:*

This day appeared the petitioning creditor, by his attorney, Henry T. Shorter, esq., and the defendant, by his attorneys, Buford & Dent, esquires, and the petitioning creditors moved to amend his petition by adding thereto certain acts of bankruptcy in said amendment pleaded, alleged to have been committed by the defendant before the filing of the original petition; the same appearing to be proper and lawful, the same is granted, and an order to show cause will issue requiring the defendant to appear and show cause, at Montgomery, in said district, on September the 4th, 1873, and a copy of said order and amended petition be served on him in accordance with the provisions of the 40th section of the act of Congress.

Overruling motion to dismiss.

On consideration of the motion of defendant to dismiss the proceeding, the same is overruled.

89 3. On consideration of the motion of defendant to recall the provisional warrant directed to issue herein, and restore to the defendant the goods and property seized by the order of this court, the same is not granted.

On considering the motion of the defendant that the said A. T. Stewart, the petitioning creditors, be required to give a bond indemnifying the defendant for all damages he may sustain by the seizure of his goods and effects under any order or process of this court, obtained or issued under or at the prayer of the petitioners filed in this matter by said petitioning creditors.

Order regarding bond.

After hearing argument of counsel therein, it is ordered that A. T. Stewart & Co., the petitioning creditors, file with the clerk of this court, on or before the 4th day of September, 1873, a good and sufficient bond in the sum of five thousand dollars, indemnifying the defendant for any damages he may sustain by virtue of the obtaining of the provisional warrant issued in this matter, or of the restraining orders directed to issue herein, and for all damages accruing to him by virtue of the issuing of the same, and for all damages he may sustain by the seizure of his goods and effects under said warrant, if on the final hearing of the said creditors, petition to have the defendant adjudged a bankrupt the said defendant shall prove that he is not bankrupt, and the proceedings against him by the said petitioning creditors shall be dismissed.

4. And the further consideration of all matters arising in this matter is hereby ordered to be adjourned to the 4th day of September, 1873, at Montgomery, in said district.

Witness the honorable Richard Busteed, judge of said court, and the seal thereof, at Montgomery, in said district, this 21st day of August, A. D. 1873.

[SEAL.] E. C. V. BLAKE,
Clerk U. S. Dist't Court Mid. Dist't Ala.

90 Allowed by me this 21st of August, 1873.

J. W. BURKE,
Register in Bankruptcy.

Filed this 21st day of August, A. D. 1873, @ 5 p. m.
E. C. V. BLAKE, *Clerk.*

Amendment to original petition.

In the United States district court for the middle district of Alabama, ss.

A. T. STEWART & Co. } *against* MEYER SONNEBORN. } In bankruptcy.

Petition filed against defendant for adjudication of bankruptcy August 15th, 1873.

By leave of the court first had and obtained, the petitioning creditors in the above cause file the following amendment to the original petition filed by them in this honorable court on the 15th day of August, A. D. 1873.

That the said Meyer Sonneborn has carried on business for the long-

est period during the six months next immediately preceding the time of the filing of the original petition in this cause, at Eufaula, in the county of Barbour, and State of Alabama, and district aforesaid.

And your petitioners further represent, on information, that within the six calendar months next preceding the date of the filing of the original petition in this cause, the said Meyer Sonneborn did commit an act of bankruptcy within the meaning of said act, to wit, in that the said Meyer Sonneborn did heretofore, to wit, on or about the 25th
91 day of July, A. D. 1873, at Eufaula, in said district, being possessed of certain estate, property, rights or credits, to wit, about eight thousand dollars' worth of goods, wares, and merchandise, situated in his store on Eufaula street, in the city of Eufaula, in said district, which comprised his stock in trade as a general dry goods merchant, did make an assignment, gift, sale, conveyance, or transfer of the same to Jonas Sonneborn, of New York, in the county of New York, and State of New York, with intent to hinder, delay, and defraud the creditors of him, the said Meyer Sonneborn.

And that the said Meyer Sonneborn, within the period aforesaid, and within said district, to wit, on or about the 25th day of July, A. D. 1873, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, affiant is informed and believes did make to one Jonas Sonneborn, of New York, in the county of New York and State of New York, a payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, with the intent thereby to give a preference to the said Jonas Sonneborn, one of the creditors of him, the said Meyer Sonneborn.

And that the said Meyer Sonneborn, within the period aforesaid, and within said district, to wit, on or about the 25th day of July, A. D. 1873, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, affiant is informed and believes did make to one Jonas Sonneborn, of New York, in the county of New York and State of New York, a payment, gift, grant, sale, conveyance, or transfer of money
92 or other property, estate, rights, or credits, with the intent thereby to give a preference to said Jonas Sonneborn, one of the creditors of him, the said Meyer Sonneborn.

And that the said Meyer Sonneborn, within the period aforesaid, and within said district, to wit, on or about the 25th day of July, A. D. 1873, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, affiant is informed and believes did make to one Jonas Sonneborn, of New York, in the county of New York and State of New York, a payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, with the intent by such disposition of his property to defeat and delay the operation of said act.

HENRY R. SHORTER,
Att'y for A. T. Stewart & Co., Petitioners.

UNITED STATES OF AMERICA.
Middle District of Alabama, ss:

I, Henry R. Shorter, one of the attorneys for A. T. Stewart & Co., the petitioners, do hereby make solemn oath that statements contained in the foregoing amendment subscribed by me are true, so far as the same are stated of my own knowledge, and that those matters which are stated therein on information and belief are true according to the best of my knowledge, information, and belief.

HENRY R. SHORTER,
Att'y for A. T. Stewart & Co., Petitioners.

Subscribed and sworn to before me this 21st day of August, A. D. 1873.

JOS W. BURKE,
Register in Bankruptcy.

93 Filed this 21st day of August, A. D. 1873, @ 3 p. m.
E. C. V. BLAKE, *Clerk.*

Motion to dismiss.

In the district court of the United States for the middle district of Alabama. In bankruptcy.

IN THE MATTER OF THE PETITION OF A. T. Stewart & Co., creditors, *vs.* MEYER SONNEBORN, DEFENDANT. } Motion to dismiss.

At Montgomery, in said district, on the 21st day of August, A. D. 1873.

MIDDLE DISTRICT OF ALABAMA, *ss:*

And now on this return day for the hearing of the original petition comes Meyer Sonneborn, the defendant therein, and moves the court to dismiss said petition for these reasons, viz:

1. Because the deposition to the proof of debt by the petitioning creditors is signed and sworn to by John D. Roquemore, who professes to be one of the attorneys of the petitioning creditors, and no reason is given why said proof of claim is not made and sworn to by the petitioning creditors themselves in person, or by some member of the firm of said petitioning creditors.

BUFORD & DENT,
Att'ys for Defendant.

Filed this 21st day of August, A. D. 1873, @ 4 p. m.
E. C. V. BLAKE, *Clerk.*

94 *Bond.*

U. S. district court, middle district of Alabama. In bankruptcy.

ALEXANDER T. STEWART & CO. *against* MEYER SONNEBOR'. }

Know all men by these presents that we, Alexander T. Stewart & Co., of the city, county, and State of New York; George B. Butler, of No. 44 East 26 street, in said city; and John M. Hopkins, of Fort Washington, in said city, county, and State, are held and firmly bound unto the above-named Meyer Sonneborn, of Eufaula, in the State of Alabama, in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said Meyer Sonneborn, his executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, dated the thirtieth day of August, one thousand eight hundred and seventy-three.

Whereas the said A. T. Stewart & Co. have filed a petition in bankruptcy in the district court of the United States for the middle district of Alabama, against the above-named Meyer Sonneborn, an alleged bankrupt;

95 And whereas a provisional warrant in bankruptcy having been directed to be issued by said court in said proceedings against the estate of said Meyer Sonneborn, directing the marshal to take possession of the property of said Meyer Sonneborn under said proceedings, and said marshal, by virtue and in pursuance thereof, having taken possession of the property of said Meyer Sonneborn as therein directed, and now holds the same in his custody:

Now the condition of this obligation is such that if the above bounden A. T. Stewart & Co. shall well and truly save harmless and indemnify the said Meyer Sonneborn from any damages he may sustain by virtue of the obtaining of the provisional warrant issued in this matter, or of the restraining orders directed to issue herein, and from all damages accruing to him by virtue of the issuing of the same, and from all damages he may sustain by the seizure of his goods and effects under said warrant, if on the final hearings of said creditors' petition to have the defendant adjudicated a bankrupt, the said defendant shall prove that he is not bankrupt, and the proceedings against him by the said petitioning creditors shall be dismissed.

In case said proceedings are not dismissed, or if said Meyer Sonneborn shall be adjudicated a bankrupt thereunder, then this obligation to be void, otherwise to remain in full force.

96 ALEX. STEWART & CO.,
P'r WILLIAM LIBBEY. [L. S.]
GEO. B. BUTLER. [L. S.]
JNO. M. HOPKINS. [L. S.]
SHULMAN, GOETTER & WEIL. [L. S.]

Signed, sealed, and delivered in the presence of—
HENRY H. RICE.
R. E. STILWELL.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

George B. Butler and John M. Hopkins, the sureties named in the within bond, being severally sworn, each for himself says that he is a freeholder within the State of New York, and is worth double the sum specified in said bond, over and above all his debts and liabilities, and exclusive of property exempt by law from execution.

GEO. B. BUTLER.
JNO. M. HOPKINS.

Sworn to before me August 30th, 1873.

R. E. STILWELL,
U. S. Commissioner for the Southern Dis't of New York.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

I certify that on this 30th day of August, 1873, before me, Richard E. Stilwell, U. S. commissioner for the southern district of New York, personally appeared William Libbey, George B. Butler, and John

97 M. Hopkins, known to me to be the individuals described in and who executed the within bond, who severally acknowledged that they executed the same; the said William Libbey being known to me to be one of the members of the firm of A. T. Stewart & Co. in said

bond described, who also acknowledged that he executed the same as the act and deed of said A. T. Stewart & Co.

[U. S. COMMISSIONER'S SEAL.] R. E. STILWELL.
U. S. Commissioner for the Southern District of New York.

Received and filed this 3rd day of September, A. D. 1873, @ 10 a. m.
E. C. V. BLAKE, *Clerk.*

Order to show cause on amended petition.

In the district court of the United States for the middle district of Alabama. In bankruptcy.

IN THE MATTER OF MEYER SONNEBORN, against whom a petition for adjudication of bankruptcy was filed on the 15th day of August, A. D. 1873. } Order to show cause on amended petition.

MIDDLE DISTRICT OF ALABAMA, *ss:*

Upon filing proofs sustaining the allegations of the amended petition aforesaid, it is ordered that the said Meyer Sonneborn do appear at this court as a court of bankruptcy, to be holden at Montgomery, in
98 the county of Montgomery, and State of Alabama, and district aforesaid, on the 4th day of September, A. D. 1873, at 10 o'clock a. m., and show cause, if any there be, why the prayer of said petition should not be granted; and it is further ordered that a copy of said petition, together with a copy of this order, be served on said Meyer Sonneborn by delivering the same to him personally, or by leaving the same at his last usual place of abode in said district, at least five days previous to the day herein required for his appearance.

Witness the Hon. Richard Busteed, judge of the said court, and seal thereof, at Montgomery, in said district, on the 21st day of August, A. D. 1873.

[SEAL.] E. C. V. BLAKE,
Clerk of District Court for said District.

Allowed this 21st , 1873.

JOS. W. BURKE,
Register in Bankruptcy.

We accept service of the within order to show cause and of the application to amend the original petition. August 21, 1873.

BUFORD & DENT,
Att'ys for Defendant,
By S. H. DENT.

Denial of bankruptcy & demand for jury trial.

In the district court of the United States for the middle district of Alabama. In bankruptcy.

IN THE MATTER OF A. T. STEWART & CO., petitioning creditors,
vs.
MEYER SONNEBORN, DEFENDANT.

99 At Montgomery, in said district, on the 21st day of August, A. D. 1873.

MIDDLE DISTRICT OF ALABAMA, *ss:*

And on this return day for the hearing of the original petition, an amendment to said petition having been offered and allowed by said court, the said Meyer Sonneborn appears and for answer to said petition as made by the said original and amended petition denies that has committed the act or acts of bankruptcy set forth in said original and amended petition, and avers that he should not be declared a bankrupt for any cause in said original and amended petition alleged, and he demands that the same may be inquired of by a jury.

And for further special answer to said original and amended petition avers and states that he did not on the 25 day of July, 1873, in Eufaula, or at any other place or time in said district or elsewhere, "make an assignment, gift, sale, conveyance, or transfer" of the said stock of goods or any other property to Jonas Sonneborn or any other person, with intent to hinder, delay, and defraud his creditors.

And further avers and states that he did not make any assignment, gift, sale, conveyance, or transfer" of said stock of goods to said Jonas Sonneborn or any other person at the time stated in said petition or at any other time.

100 And for further special answer to said original and amendment petition avers and states that he was not on or about 25th day of July, 1873, or at any other time, in said district or elsewhere, "bankrupt or insolvent," and did not contemplate "bankruptcy or insolvency," and did not, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, and did not at all at any time, make to one Jonas Sonneborn a payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, with the intent thereby to give a preference to the said Jonas Sonneborn or any other person, and did not at all at any time make such payment, gift, grant, sale, conveyance, or transfer to said Jonas Sonneborn or any other person.

And for further answer to said original and amended petition denies that within six calendar months next preceding the date of the filing of the original petition in this case or at any other time, in said district or elsewhere, that he was bankrupt or insolvent or in contemplation of bankruptcy or insolvency, and denies that, "being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency," he made at the time stated or at any other time to one Jonas Sonneborn or to any other person any payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, with the intent by such disposition of his property to defeat and delay the operation of said bankrupt act, or that he made any payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits

101 at all to said Sonneborn or to any other person; and he demands that all these matters may be inquired of by a jury.

BUFORD & DENT,
Att'ys for Def't,
By S. H. DENT.

Filed this 4th day of September, A. D. 1873, *a* 12 m.
E. C. V. BLAKE, *Clerk.*

Motion for fourteen days' longer time to give resident sureties to indemnifying bond granted.

U. S. district court, middle district of Alabama. In bankruptcy, at Montgomery, Sept. 4th, 1873.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

In this case comes this day the plaintiffs, by their attorneys, Mess'rs Shorter & Brother, and moves the court for fourteen days' longer time within which they may obtain securities residing in this district to the indemnifying bond heretofore filed in this case by said plaintiff and under a prior order of this court.

SHORTER & BROTHER,
For motion.

This motion is granted.

J. W. BURKE,
Register in Bankruptcy.

Filed this 4th day of September, A. D. 1873, @ 12 m.
E. C. V. BLAKE, *Clerk.*

102 *Notice of petitioner to Def'ts of petition to amend.*

In the United States district court for the middle district of Alabama, ss:

IN THE MATTER OF A. T. STEWART AND COMpany, petitioning creditors, *against* MEYER SONNEBORN. } In bankruptcy.

To Buford and Dent, esquires, solicitors for said Meyer Sonneborn:

You are hereby notified that at the next term of the United States district court for the middle district of Alabama, we will move before the Hon. Richard Busteed, the judge of said court at Montgomery, Alabama, for leave to file an amendment to the original petition filed in this cause, a copy of which said proposed amendment and the petition for its allowance is hereto attached and served upon you.

Witness our hands this the 13th day of October, A. D. 1873.

A. T. STEWART & COMPANY,
By SHORTER & BROTHER &
WOOD & ROQUEMORE,
Their Solicitors.

103 *Petition for allowance of amendment.*

In the United States district court for the middle district of Alabama, ss:

IN THE MATTER OF A. T. STEWART & COMPAny, petitioning creditors, *against* MEYER SONNEBORN. } In bankruptcy.

To the Honorable Richard Busteed, judge of said court:

Your petitioners, A. T. Stewart & Company, a mercantile firm com-

posed of Alexander T. Stewart, George Fox and William Libbey, and doing business in the city of New York, county and State of New York, respectfully represent unto your honor:

I. That on the 15th of July, 1873, they filed in this honorable court a petition to declare one Meyer Sonneborn a bankrupt in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and the various amendments thereto.

II. That in their said petition they set forth and described their demand against said Meyer Sonneborn, as being two several judgments rendered against E. Leipziger and Company, of which said firm of E. Leipziger and Company the said Meyer Sonneborn was a member, one in the supreme court of the State of New York for the city and
104 county of New York, for the sum of nine hundred and thirty-seven $\frac{67}{100}$ dollars, besides twenty-two $\frac{54}{100}$ dollars costs and disbursements, on the 28th day of September, 1867; the other in the superior court of the city of New York, county and State of New York, for the sum of fifteen hundred and eighty-five $\frac{40}{100}$ dollars, besides nineteen & $\frac{94}{100}$ dollars costs and disbursements, on the 5th day of June, 1867.

III. That if your petitioners' claims, for any reason are not good against said Meyer Sonneborn as judgments, then your petitioners, claims will be good and valid in the shape of an account for the sum of twenty-three hundred and eighty-one $\frac{30}{100}$ dollars for goods bought by the firm of E. Leipziger and Company (of which firm said Meyer Sonneborn was a member) from your petitioners from the 23rd of January, 1867, to the 19th day of March, 1867, inclusive, against the said Meyer Sonneborn, the average date of which purchases is the 21st day of February, 1867.

IV. That an allegation in said original petition to the effect that if your petitioners' said claim against Meyer Sonneborn were not good as judgments they were good and valid as an account as above stated, was by accident, inadvertence, and mistake left out of said original petition when it was prepared.

105 Wherefore your petitioners pray that they be allowed to amend their said original petition filed as aforestated, by inserting therein next immediately preceding the sentence which begins with these words, viz: "And that the nature of your petitioners demand against the said Meyer Sonneborn," the following words and figures, to wit, "and that the nature of your petitioners' demand against said Meyer Sonneborn is as follows: an account for goods, wares, and merchandise sold and delivered by your petitioners to E. Leipziger and Company (of which firm said Meyer Sonneborn was a member), on & between the 23rd day of January, 1867, and the 19th day of March, 1867, amounting in value to twenty-three hundred and eighty-one $\frac{30}{100}$ dollars, was due on the 21st day of August, 1867," and they will as in duty bound ever pray, &c.

HENRY R. SHORTER,
Att'y for A. T. Stewart & Co., Petitioners.

UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I, Henry R. Shorter, one of the attorneys for the petitioners abovenamed, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by the petitioners, by their attorneys, so far as they are stated of my own knowledge, and those matters

which are stated therein on information and belief, are true according to the best of my knowledge, information and belief.

HENRY R. SHORTER,
Attorney for Petitioner.

Subscribed and sworn to before me this 13th day of October, A. D. 1873.

A. W. COCHRAN,
U. S. Commissioner for Middle District of Alabama.

Amendment to original petition.

In the United States district for the middle district of Alabama, ss:

IN THE MATTER OF MEYER SONNEBORN, AGAINST whom a petition for adjudication of bankrupty was filed by A. T. Stewart and Company, on the 15th day of July, A. D. 1873. } In bankruptcy.

The petitioning creditors in the above cause, having first obtained leave of this honorable court therefor, file the following amendment to their original petition in this cause filed, that is to say, by inserting in said original petition next immediately preceding the sentence which begins "and that the nature of your petitioners demand against the said Meyer Sonneborn," the following words and figures, to wit, "and that the nature of your petitioners' demand against said Meyer Sonneborn is as follows: an account for goods, wares, and merchandise sold and delivered by your petitioners to E. Leipziger and Company (of which firm the said Meyer Sonneborn was a member), on and between the 23rd day of January, 1867, and the 19th day of March, 1867, amounting in value to twenty-three hundred and eighty-one $\frac{20}{100}$ dollars and due on the 21st day of August, 1873."

A. T. STEWART & CO.,
Petitioners,
By HENRY R. SHORTER,
Their Attorney.

UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I, Henry R. Shorter, attorney for the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by me as attorney for the petitioners, are true, so far as the same are stated of my own knowledge, and those matters which are stated therein on information and belief are true, according to the best of my knowledge, information, and belief.

HENRY R. SHORTER.
Attorney for A. T. Stewart & Co., Petitioners.

Subscribed and sworn to before me this 13th day of October, A. D. 1873.

A. W. COCHRAN,
U. S. Commissioner for Mid. Dist., Ala.

Executed by serving a copy of the within on S. H. Dent, attorney of record for Meyer Sonneborn, Oct. 13th, 1873.

R. W. HEALY,
U. S. Marshal,
Pr T. D. PATTERSON,
Deputy U. S. M.

108 *Proof of debt without security.*

In the district court of the United States for the middle district of Alabama. In bankruptcy.

In the matter of Meyer Sonneborn, bankrupt.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

At the city, county, and State of New York, on the thirtieth day of August, A. D. 1873, before me, Richard E. Stilwell, U. S. commissioner for said district, came William Libbey, of the city, county, and State of New York, and made oath, and says that he is a member of the firm of A. T. Stewart & Co., of said city, which firm is composed of Alexander T. Stewart, George Fox, and deponent, and that the said Meyer Sonneborn (along with E. Leipziger, his co-partner, doing business under the firm-name of E. Leipziger & Co.), the person against whom a petition for adjudication of bankruptcy has been filed, at and before the filing of the said petition and still is justly and truly indebted to this deponent's said firm in the sum of twenty-three hundred and eighty-one & $\frac{90}{100}$ dollars ($2,381.90), with interest thereon from the 21st day of August, 1867, on an open account for goods and merchandise sold and delivered by deponent's said firm of A. T. Stewart & Co., to said E. Leipziger & Co. (of which firm said Meyer Sonneborn was a member), between the 23rd day of January and the 19th day of March, 1867, amounting in value to the sum
109 of twenty-three hundred and eighty-one and $\frac{90}{100}$ dollars, a bill of items of which is hereto annexed, marked "Exhibit A." That the consideration thereof was goods sold and delivered by deponent's said firm to said bankrupt's firm of E. Leipziger & Co., at the city of New York; that no payments have been made on account thereof and no note given therefor, for which said sum of twenty-three hundred and eighty-one $\frac{90}{100}$ dollars, and interest as aforesaid, or any part thereof, this deponent says that he has not, nor has any member of his said firm, nor has any person by its order, or to this deponent's knowledge or belief, for its use, had or received any manner of satisfaction or security whatever.

And this deponent further says that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, express or implied, has been made or entered into by or on behalf of this deponent, or by any member of his said firm, to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent, or either of his partners, for assignee, or any action on the part of this deponent, of his said firm, or any other person, in the proceedings under said act, has been, is, or shall be, in any way affected, influenced, or control'ed.

WILLIAM LIBBEY,
Deposing Creditor.

Subscribed and sworn to before me this 30th day of August, A. D.

[COMMISSIONER'S SEAL.] R. E. STILWELL,
U. S. Commissioner for the Southern District of New York.

110 No. 6,282. Invoice.—Sales, 355.—Folio 636.

NEW YORK, *January 23rd*, 1867.

M. E. Leipziger & Co., 83 Reade s't, city, bought of Alex. T. Stewart & Co., Broadway, Chambers, and Reade streets.

1867.						
January 23	10 p's f'cy cass.	302½	80	241 80		
	2 " " " "	77½	1 00	77 25		
	6 " wool tweed	178	68	142 40		
	1 " ⅝ cass.	25	2 00	50 00		
						511 45
January 31	6 " satinet	158½	65	103 03		
						103 03
March 2	1 bale of Baltimore duck	814	45	366 30		
						366 30
" "	2 p's Bedford ¾ cass.	36½	75	27 37		
" "	1 " ¾ f'cy " (as is)	26¼	75	19 69		
" "	1 " 4 " "	21	1 25	26 25		
" "	14 " " " "	387½	1 00	387 75		
" "	2 " ⅝	50½	2 00	100 75		
" "	4 " D. & F. cass. (as is)	122½	2 00	244 75		
						806 56
" "	10 " R. duck	407½	45	183 37		
" "	4 " black stripe	220½	20	44 15		
" "	3 " ¼ check	161½	30	48 38		
" "	10 " Artic canton	346½	17½	60 59		
						336 49
" 8	2 bales Fremont Bro. jean, 806 & 807	1,613	15	241 95		
						241 95
" 19	1 Sprague print	44	17	7 48		
						7 48
" "	1 crash	13½	14	1 84		
" "	1 diaper	.....	.....	1 85		
[111½						3 74
" "	1 Sco. diaper	.....	.....	2 80		
" "	1 " "	.....	.....	2 10		
						4 90
						$2,381 90

Ad. date Feb'ry 21. Due net cash, Aug't 21, 1867.
Exhibit A.

R. E. S., *U. S. Com'r.*

Summons.

THE STATE OF ALABAMA,
Barbour County:

Be it remembered that on the 4th day of October, A. D. 1869, the following summons and complaint was prosecuted from the office of the clerk of the circuit court in and for said county, and proceedings had thereon as follows, to wit:

STATE OF ALABAMA,
Barbour County:

To any sheriff of the State of Alabama:

You are hereby commanded to summon Meyer Sonneborn to appear at the next term of the circuit court to be held for said county, at the place of holding the same, then and there to answer the complaint of Alexander T. Stewart, Francis Warden, George Fox, and William Libbey, partners in trade, using firm-name of A. T. Stewart & Co.

Witness my hand this 4th day of October, 1869.

A. T. SPENCE, *Clerk.*

Complaint.

Barbour circuit court, fall term, 1869.

A. T. STEWART & CO., PLAINTIFFS,
vs.
MEYER SONNEBORN, DEFENDANT.

112 Alexander T. Stewart, Francis Warden, George Fox, and William Libbey, partners in trade using the firm-name of A. T. Stewart & Co., claim of the defendant sixteen hundred and five $\frac{34}{100}$ dollars, due by a judgment rendered on the 5th day of June, A. D. 1867, in the superior court of the city of New York, in the State of New York, which court is a court of common law and had jurisdiction of said cause and said parties, in favor of the plaintiffs, against one Edward Leipziger and the defendant, then partners in trade using the firm and style name of Edward Leipziger & Co., which said judgment, with the interest thereon, the plaintiffs aver is still due and unpaid, and not in anywise reversed or annul'ed; wherefore they sue, &c.

The plaintiffs also claim of the defendants the further sum of nine hundred and sixty $\frac{20}{100}$ dollars, due by a certain other judgment rendered on the 19th day of August, A. D. 1869, in the superior court of the State of New York for the county of New York, which court is a court of common law and had jurisdiction of said cause and said parties, in favor of the plaintiffs against one Edward Leipziger and the defendant, then partners in trade using the firm-name of Edward Leipziger & Co., which said judgment, with the interest thereon, the plaintiffs aver is still due and unpaid, and not in anywise reversed or annul'ed.

Wherefore they sue, &c.

SHORTER & BROTHER,
Att'ys for Plaintiffs.

113 *Security for costs.*

The plaintiffs being non-residents, we bind ourselves security for the costs of this suit.

October 4th, 1869.

SHORTER & BROTHER.

Received in office Oct. 4th, 1869.

W'M M. RUSSELL, *Sheriff.*

Executed by leaving a copy of the within summons and complaint with the defendant.

Oct. 4th, 1869.

W'M M. RUSSELL, *Sheriff.*

And afterwards leave was granted plaintiffs to amend their complaint as follows, to wit:

Amended complaint.

1. The plaintiffs claim of the defendant the sum of two thousand three hundred and eighty-one $\frac{20}{100}$ dollars, due by their several accounts, one for the sum of nine hundred and fifty-five $\frac{90}{100}$ dollars, due on the 20th day of April, 1867; one for the sum of six hundred & fourteen $\frac{48}{100}$ dol-

lars, due on the 31st day of April, 1867, and the other for the sum of eight hundred and eleven $\frac{4}{100}$ dollars, due on the 20th day of June, 1867, which three several accounts, with the interest thereon, are now due and unpaid.

2. The plaintiffs also claims of the defendant the sum of sixteen hundred and fourteen $\frac{45}{100}$ dollars, due by account for merchandise, goods, and chattels sold by the plaintiffs to the firm of E. Leipziger & Co. (of which firm defendant was a member), at their instance and request, between the 23rd and 31st days of January, 1867, on a credit of ninety days, which sum of money, with the interest thereon, is now due and unpaid.

114 3. The plaintiffs also claim of the defendant the sum of nine hundred and fifty-five $\frac{96}{100}$ dollars, due by account for merchandise, goods, and chattels sold by the plaintiffs to the firm of E. Leipziger & Co. (of which firm defendant was a member), at their request, between the 1st and 20th day of March, 1867, on a credit of thirty days, which sum of money, with the interest thereon, is now due and unpaid.

4. The plaintiffs also claim of the defendant the sum of eight hundred and eleven $\frac{45}{100}$ dollars, due by account for merchandise, goods, and chattels sold by the plaintiffs to the firm of E. Leipziger & Co., (of which firm defendant was a member) at their request, between the 23rd and 31st days of January, 1867, on a credit of ninety days, which sum of money, with the interest thereon, is now due and unpaid.

5. The plaintiffs also claim of the defendant, who was a member of the former firm of E. Leipziger & Co., which firm was composed of Edward Leipziger and defendant, the further sum of two thousand three hundred and eighty-one $\frac{20}{100}$ dollars, due for merchandise, goods, and chattels sold and delivered by the plaintiffs to the said firm of E. Leipziger & Co., at their request, in the months of February, January, March, April, May, and June, 1867, which said sum of money, with the interest thereon, is still due and unpaid.

6. The plaintiffs also claim of the defendants the further sum of two thousand three hundred and eighty-one $\frac{20}{100}$ dollars, due on account stated between the plaintiffs and the firm of E. Leipziger & Co. (of which firm defendant was a member) on the 5th day of June and 19th of August, 1867, which sum of money, with interest thereon,

115 is now due and unpaid.

SHORTER & BROTHER,
Plaintiffs' Att'ys.

And afterwards the defendant filed the following pleas, to wit:

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

Suit pending in the circuit court of Barbour County, Alabama.

The defendant, for answer to the complaint in this case, saith that he was not a member of the firm of Edward Leipziger & Co. either at the time of the rendition of the judgments sued and described in the complaint or at the time the accounts which were the cause of actions in the original suits were created, and that he has no connection with the said firm of E. Leipziger & Co. since April, 1866; and since that time he has never resided in the city of New York; and that he had no personal notice of the suits in New York; that he never appeared in person

or by counsel, nor authorized any one to appear for him in the original suits upon which the judgments were rendered against him which are the foundation of the suits in this case, and that he never, by himself or any other person, or in any way whatever, created any liability, or bound himself to pay the judgments sued on, or the accounts which were the cause of action in the original suits in New York, and he makes oath that the facts stated in this plea are true.

M. SONNEBORN.

116 Sworn to and subscribed before me this 30th day of October, A. D. 1869.

A. W. BRANNON,
Notary Public, & ex off. J. P.

Plea filed Nov. 2, 1869.

A. T. SPENCE, *Clerk.*

Plea No. 2.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

Suit in the circuit court of Barbour circuit court.

The defendant, for answer to the amended complaint filed in this case, says:

1. Non assumpsit.
2. The statute of limitations of 3 years.
3. And for further answer makes oath as follows:

That he is not now, and was not at the time the accounts sued on were created, a member of the firm of Edward Leipziger & Co., and that he never was a member of the firm of Edward Leipziger & Co., & *Co.*, at any time.

MEYER SONNEBORN.

Sworn to and subscribed before me this 22d day of August, 1871.

A. T. SPENCE, *Clerk.*

Plea filed in office August 22d, 1871.

A. T. SPENCE, *Clerk.*

Plea No. 3.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

Suit in circuit court of Barbour County, Alabama.

The defendant, *the defendant* in answer to the third amended complaint, says:

1. Non assumpsit.
2. The statute of limitations of 3 years.

117 3. And for further answer makes oath as follows:

That he is not now, and was not at the time the accounts sued on were created, a member of the firm of E. Leipziger & Co. That he

withdrew from said firm in April, 1866, of which fact plaintiffs had notice before the accounts sued on were created.

MEYER SONNEBORN.

Sworn to and subscribed before me this 22d day of August, 1871.

A. T. SPENCE, *Clerk.*

Filed in office Aug. 22d, 1871.

A. T. SPENCE, *Clerk.*

And at the fall term, A. D. 1873, of the circuit court of Barbour County the following judgment was rendered in said case:

A. T. STEWART & CO. *vs.* MEYER SONNEBORN. } 234. Nov. 17th, 1873.

This day came the parties by their attorneys, and the plaintiffs ask for a continuance on the grounds that plaintiffs has filed a petition in bankruptcy to have the defendant declared an involuntary bankrupt, which, upon a hearing of the same is denied and overruled by the court, and the plaintiff excepts.

A. T. STEWART & CO. *vs.* MEYER SONNEBORN. } 234. Nov. 18th, 1873.

This day came the parties by their atterneys, and the defendant pleads the general issue, and issue being joined on said plea, then came a jury of good and lawful men, to wit, R. E. Brown, foreman, and eleven others, who say, upon their oaths, that they find for the defend-
118 ant. It is therefore considered by the court that the defendant go hence and recover of the plaintiffs the costs in this behalf expended, for which execution may issue.

THE STATE OF ALABAMA,
Barbour County:

I, A. T. Spence, hereby certify that the foregoing pages numbered from one to nine, inclusive, contains a full, true, and complete transcript of the original summons and complaint, the amended complaint, the pleas of defendant, and the verdict of the jury, and the judgment of the court, as the same remains of record and on file in my office, in the case wherein A. T. Stewart & Co. are plaintiffs and Meyer Sonneborn defendant.

Witness my hand and seal of office at Clayton, this the 2nd day of December, 1873.

[SEAL.] A. T. SPENCE, *Clerk.*

THE STATE OF ALABAMA,
Barbour County:

I, J. McCaleb Wiley, one of the judges of the circ t court of the State of Alabama, and the duly elected and qualified circuit court judge of the eighth judicial circuit of said State, of which eighth judicial circuit of said State the county of Barbour, in said State, constitutes a part, and the presiding judge of the circuit court of the said county, on the trial, in said circuit court of said county, of the cause

wherein A. T. Stewart & Co. were plaintiffs and Meyer Sonneborn was defendant, hereby certify that A. T. Spence is the clerk of said circuit court in said county, and was such clerk on the trial of said cause, and that the above certificate is signed by said Spence with his
119 own proper and genuine signature, and that the said certificate of said clerk is in due form of law.

Witness my hand this 21st day of January, A. D. 1874.

[L. S.] J. McCALEB WILEY,
Judge of the 8th Judicial Circuit of Alabama.

Filed September 5th, A. D. 1874, @ 2 p. m.
J. W. DIMMICK, *Clerk.*

Agreement of counsel.

In U. S. district court at Montgomery. In bankruptcy.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

In the trial of the above-stated cause, we hereby agree that all the depositions taken in the circuit court of Barbour County, Alabama, in the case pending there between the same parties, may be used in the U. S. district court the same as if they had originally been taken under a commission issued from said district court, subject to the right of either party to object to any of said evidence for illegality, irrelevancy, or any other legal exception that may be taken to said evidence or any part thereof, no objection, however, to be taken to the mode and manner of taking said evidence. This agreement to apply to the evidence to be hereafter taken as well as that already taken.

SHORTER & BROTHER,
Att'ys for Pl'ff.
BUFORD & DENT,
Att'ys for Sonneborn.

Eufaula, Sept. 5th, 1873.

120 Filed this 5th day of September, A. D. 1874.
J. W. DIMMICK, *Clerk.*

Agreement of counsel as to the facts of the case.

In the matter of the petition of A. T. Stewart & Co., in the U. S. district court at Montgomery, to have Meyer Sonneborn declared an involuntary bankrupt.

A. T. STEWART & CO., A FIRM COMPOSED OF Alexander T. Stewart, Francis Warden, George Fox and William Libbey,
vs.
MEYER SONNEBORN.

Facts of the case as agreed on by the counsel of the respective parties.

1. In the year 1869 the above named petitioning creditors, A. T. Stewart & Co., brought suit in the circuit court for Barbour County, State of Ala-

bama, to recover ont of the said Meyer Sonneborn about twenty-five hundred dollars for goods and merchandise sold by the plaintiffs A. T. Stewart & Co., to the firm of E. Leipziger & Co., in the city of New York, of which last mentioned firm said Sonneborn had been a member. Said Sonneborn defended the suit thus brought in the said State court, and set up as a defence that before the goods and merchandise referred to in the complaint, and which were the cause of action, were sold to the said firm of E. Leipziger & Co.; that he, Meyer Sonneborn, had withdrawn from said firm of E. Leipziger & Co., and ceased to be a member thereof, and that plaintiffs, A. T. Stewart & Co. had, prior to said sale of said goods and merchandise, notice of his, Sonneborn's, withdrawal and retirement from said firm. Stewart & Co. denied the fact that
121 they ever had received any notice of the retirement of said Sonneborn from said firm of E. Leipziger & Co. before the sale of said goods and merchandise to said firm of E. Leipziger & Co.

At the special term of said circuit court for Barbour County, held in August, 1871, a trial of the issues involved in said case was had before a jury, all the parties being represented by counsel at said trial, which trial resulted in a verdict for the defendant Sonneborn, and judgment was entered accordingly. From this verdict and judgment the plaintiffs, Stewart & Co., prosecuted an appeal to the supreme court of Alabama, which court reversed the said judgment of said circuit court and remanded the cause for a new trial.

In August, 1873, before the new trial was had, and while said cause was pending in said State court, viz. the circuit court for Barbour County, Alabama, the plaintiffs A. T. Stewart & Co., upon this identical alleged indebtedness, filed their petition in the United States district court for the middle district of Alabama, praying that said Sonneborn be declared an involuntary bankrupt, under the U. S. bankrupt law of 1867, for the causes enumerated and set forth in said petition.

To this petition said Sonneborn filed an answer denying the allegations therein, and demanding a jury trial.

At the fall term, 1873, of said circuit court for Barbour County, to wit, in November, 1873, the said case of A. T. Stewart & Co. versus Meyer Sonneborn was called regularly for trial.

The plaintiffs objected to going to trial in said cause for the reason that they had filed their petition in said U. S. district court for
122 the middle district of Alabama, asking and praying to have said Sonneborn declared an involuntary bankrupt, and that said petition and the answer thereto filed by said defendant Sonneborn was still pending and undetermined in said bankrupt court, no trial on the issues involved in said petition and answer thereto having been had in said U. S. district court.

The plaintiffs also contended that the filing of the petition in bankruptcy by them to have said Sonneborn declared an involuntary bankrupt, was a transfer pro tempore to the United States district court at Montgomery of said cause. They further contended that said United States district court had by the filing of said petition acquired jurisdiction of the cause, and that no consent of said U. S. district court had been obtained for the State court to proceed with the trial of said cause. The plaintiffs further contended that the decision and judgment of said State court as to the question of indebtedness would not be conclusive and binding on said U. S. district court.

The said circuit court for Barbour County overruled said objections of the plaintiffs and required them to proceed with the trial of said cause, and thereupon the said plaintiffs under protest and objection,

and said defendant, both parties being represented by counsel, proceeded to the trial of said cause, on the pleas of the defendant, and issue joined thereon by the plaintiffs, and thereupon a jury was impannelled, to which said cause was regularly submitted, and to which the said plaintiffs and defendant introduced all the evidence taken by them and in their power to produce upon the issue joined as aforesaid, and after full argument in said cause by the attorneys of the plaintiffs and defendant, and after the presiding judge had charged the
123 jury as to the law of the case, the jury retired, and after due consideration brought in and rendered a verdict for the defendant, and upon said verdict the court rendered a judgment in favor of the defendant.

Before the adjournment of said court the said plaintiffs made out and presented their bill of exceptions to the charges and rulings of said Barbour County circuit court in said cause, which was signed by the presiding judge in term time, and upon said bill of exceptions said plaintiffs appealed to the supreme court of Alabama, and said supreme court proceeded to hear said cause upon briefs filed by the respective attorneys for said parties, and upon consideration at the June term, 1874, of said supreme court the judgment of said circuit court was in all things affirmed, as will appear by the annexed synopsis or head-notes of the opinion of said supreme court.

A. T. STEWART & CO. *vs.* MEYER SONNEBORN. } Appeal from the circuit court of Barbour County.

B. F. SAFFOLD, *J.*:

In a suit in assum'sit to charge the defendant as a member of a firm from which he had withdrawn before the debt sued for was contracted, a charge to the jury that the defendant is liable unless notice of the dissolution had been given to all of the creditors or persons who had dealings with the firm, is properly refused.

2. A charge which assumes that no notice was given unless it
124 was done by some one of the members of the dissolved firm himself, is correctly refused.

3. Proceedings in an action in a State court will not be stayed simply on the ground that the plaintiffs have taken proceedings to have the defendant declared bankrupt. In such case an order of the court of bankruptcy adjudging the defendant a bankrupt must be made before they are entitled to a stay of proceedings.

Affirmed.

And the judgment of said circuit court and the affirmance thereof by the said supreme court are now in full force and effect.

J. L. PUGH & S. H. DENT,
Att'ys for Def't Sonneborn.

A. T. STEWART & CO., A FIRM COMPOSED of Alexander T. Stewart, Francis Warden, George Fox, and William Libbey, *vs.* MEYER SONNEBORN.

In the matter of the petition of A. T. Stewart & Co. to have Meyer Sonneborn declared an involuntary bankrupt, in the U. S. district court for the middle district of Alabama.

This agreement witnesseth, that A. T. Stewart & Co. as plaintiffs and

Meyer Sonneborn as defendant in the above-stated cause, have this day agreed to submit and do hereby submit to the Hon. Richard Bus-
125 teed, as judge of the district court of the United States for the middle district of Alabama, at Montgomery, the question of law arising upon the facts set forth in the foregoing statement and agreement, which is made a part of, and shall be referred to and used as a part of, this agreeement. That is to say :

The Hon. Richard Busteed, as said judge, is authorized by us to decide whether, upon the facts as set forth in the foregoing statement, the trial, verdict, and judgment in the case stated therein, of A. T. Stewart & Co. vs. Meyer Sonneborn, in the circuit court for Barbour County and State of Alabama, is conclusive in the said proceedings in the bankrupt court at Montgomery, of the question of indebtedness by said Sonneborn to said Stewart & Co., and whether, notwithstanding said trial and judgment in said circuit court, and the affirmance thereof by said supreme court, the question of indebtedness by said Sonneborn to said Stewart & Co. is still open for another trial thereof in the said bankrupt proceedings; it being admitted that the said suit in the said circuit court and the said proceedings in said bankrupt court is by and between the same parties plaintiffs and defendant and founded on the same identical supposed indebtedness or cause of action.

The plaintiffs, A. T. Stewart & Co., insist that the fact of indebtedness found against them by the jury in said trial in said circuit court and the judgment and affirmance thereof are not conclusive or binding
126 upon the district court, and that the same can be re-examined and re-tried by said district court the same as though no trial had been had between said parties in said circuit court.

The defendant Sonneborn insists that as he was invited by said plaintiffs into the said circuit court of Barbour County to litigate with them the question of defendant's indebtedness to plaintiffs, and said circuit having taken jurisdiction of said cause, and having rightful jurisdiction thereof at and before the commencement of said proceedings in bankruptcy, and the said defendant, Sonneborn, making no application to said bankrupt court for an order upon the said circuit court to suspend all action or further proceedings in said cause therein, and said circuit court having proceeded to try and determine said question of indebtedness before said Sonneborn was adjudged a bankrupt in said bankrupt proceedings (the said Sonneborn never yet having been adjudged a bankrupt), that the said trial, verdict, judgment, and affirmance thereof are conclusive in the said bankrupt court of the said question of indebtedness, and if the said judge of said district court shall decide that the verdict and judgment in said circuit court and the affirmance thereof by the said supreme court are conclusive and can be pleaded in bar of any inquiry into the question of indebtedness aforesaid in said bankrupt court, then the said bankrupt proceedings shall be dismissed out of said bankrupt court and the said A. T. Stewart & Co. and the said Sonneborn or either of them shall have the right of appeal or be entitled to the writ of mandamus or other appropriate remedy according to
127 existing laws governing such appeals or proceedings, from any decision the said judge of said district court may make on the foregoing facts and this submission.

J. L. PUGH & S. H. DENT,
Attorneys for Def't Sonneborn.
SHORTER & BROTHER,
Att'ys for A. T. Stewart & Co.

Filed September 5th, A. D. 1874, @ 2 p. m.
J. W. DIMMICK, *Clerk.*

Decree.

In the district court of the United States for the middle district of Alabama. In bankruptcy.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

This cause having been submitted on an agreed state of facts, and on brief of counsel, which papers will be filed herewith, and due consideration being had thereof, it is ordered, adjudged, and decreed that judgment go for the defendant herein. Sept. 5th, 1874.

RICHARD BUSTEED,
Judge, &c.

Filed Sept. 5th, A. D. 1874, @ 2 p. m.
J. W. DIMMICK, *Clerk.*

128 The plaintiff then introduced the transcript of the record from the circuit court of Barbour County, Alabama, of the case of A. T. Stewart & Co. vs. Meyer Sonneborn; and also the transcript from the records of the supreme court of Alabama in the same cause, showing the affirmance of the judgment below in favor of said Sonneborn, as follows, to wit:

Transcript from circuit court of Barbour Co.

THE STATE OF ALABAMA,
Barbour County:

Be it remembered, that on the 4th day of October, A. D. 1869, the following summons and complaint was prosecuted from the office of the clerk of the circuit court in and for said county, and proceedings had thereon as follows, to wit:

Summons.

STATE OF ALABAMA,
Barbour County:

To any sheriff of the State of Alabama:

You are hereby commanded to summon Meyer Sonneborn to appear at the next term of the circuit court to be held for said county, at the place of holding the same, then and there to answer the complaint of Alexander T. Stewart, Francis Warden, George Fox, and William Libby, partners in trade, using firm-name of A. T. Stewart & Co.

Witness my hand this 4th day of October, 1869.

A. T. SPENCE, *Clerk.*

129 *Complaint.*

Barbour circuit court, fall term, 1869.

A. T. STEWART & CO., PLAINTIFFS,
vs.
MEYER SONNEBORN, DEFENDANT.

Alexander T. Stewart, Francis Warden, George Fox, and William

Libby, partners in trade using the firm-name of A. T. Stewart & Co., claim of the defendant sixteen hundred and five $\frac{34}{100}$ dollars, due by a judgment rendered on the 5th day of June, A. D. 1867, in the superior court of the city of New York, in the State of New York, which court is a court of common law, and had jurisdiction of said cause and said parties, in favor of the plaintiff, against one Edward Leipzeiger and the defendant, then partners in trade, using the firm and style name of Edward Leipzeiger & Co., which said judgment, with the interest thereon, the plaintiffs aver is still due and unpaid, and not in any wise reversed or annulled; wherefore they sue, &c.

The plaintiffs also claim of the defendants the further sum of nine hundred and sixty $\frac{20}{100}$ dollars, due by a certain other judgment rendered on the 19th day of August, A. D. 1869, in the superior court of the State of New York for the county of New York, which court is a court of common law, and had jurisdiction of said cause and said
130 parties, in favor of the plaintiffs against one Edward Lepzeiger and the defendant, then partners in trade using the firm name of Edward Lepzeiger & Co., which said judgment, with the interest thereon, the plaintiffs aver is still due and unpaid, and not in any wise reversed or annulled; wherefore they sue, &c.

SHORTER & BROTHER,
Att'ys for Pl'ffs.

Security for costs.

The plaintiffs being non-residents, we bind ourselves security for the costs of this suit.
Oct. 4th, 1869.

SHORTER & BROTHER.

Sheriff's return.

Received in office October 4th, 1869.

WM M. RUSSELL, *Sh'ff.*

Executed by leaving a copy of the within summons and complaint with the defendants.
Oct. 4th, 1869.

WM M. RUSSELL, *Sh'ff.*

And afterwards leave was granted plaintiffs to amend their complaint, as follows, to wit:

Amended complaint cont'd.

Amended 1. The plaintiffs claim of the defendant the sum of two thousand three hundred and eighty-one $\frac{90}{100}$ dollars, due by their several accounts; one for the sum of nine hundred and fifty-five $\frac{96}{100}$ dollars due on the 20th day of April, 1867; one for the sum of six hundred and fourteen $\frac{48}{100}$ dollars, due on the 31st day of April, 1867, and
131 the other for the sum of eight hundred and eleven $\frac{46}{100}$ dollars, due on the 20th day of June, 1867, which three several accounts, with the interest thereon, are now due and unpaid.

2. The plaintiffs also claim of the defendants the sum of sixteen hundred and fourteen $\frac{48}{100}$ dollars, due by account for merchandise, goods, and chattels sold by the plaintiffs to the firm of E. Leipzeiger & Co. (of

which firm defendant was a member), at their instance and request, between the 25th and 31st days of January, 1867, on a credit of ninety days, which sum of money, with the interest thereon, is now due and unpaid.

3. The plaintiffs also claim of the defendant the sum of nine hundred and fifty-five $\frac{96}{100}$ dollars, due by account, for merchandise, goods, and chattels sold by the plaintiffs to the firm of E. Leipzeiger & Co. (of which firm the defendant was a member) at their request between the 1st and 20th day of March, 1867, on a credit of thirty days, which sum of money, with the interest thereon, is now due and unpaid.

4. The plaintiffs also claim of the defendant the sum of eight hundred and eleven $\frac{46}{100}$ dollars, due by account, for merchandise, goods, and chattels sold by the plaintiffs to the firm of E. Leipzeiger & Co. (of which defendant was a member) at their request, between the 23rd and
132 31st days of January, 1867, on a credit of ninety days, which sum of money, with the interest thereon, is now due and unpaid.

5. The plaintiffs also claim of the defendant, who was a member of the former firm of E. Leipzeiger & Co., which firm was composed of Edward Leipzeiger and defendant, the further sum of two thousand three hundred and eighty-one $\frac{75}{100}$ dollars, due for merchandise, goods, and chattels sold and delivered by the plaintiffs to the said firm of E. Leipzeiger & Co., at their request, in the months of February, January, March, April, May, and June, 1867, which said sum of money, with the interest thereon, is still due and unpaid.

The plaintiffs also claim of the defendants the further sum of two thousand three hundred and eighty-one $\frac{75}{100}$ dollars, due on account stated, between the plaintiffs and the firm of E. Leipzeiger & Co. (of which firm defendant was a member) on the 5th day of June and 19th of August, 1867, which sum of money, with the interest thereon, is now due and unpaid.

SHORTER & BROTHER,
Pl'ffs' Att'ys.

And afterwards the defendant filed the following pleas, to wit:

Plea No. 1.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

133 Suit pending in the circuit court of Barbour County, Ala.

The defendant for answer to the complaint in this case saith that he was not a member of the firm of Edward Leipzeiger & Co., either at the time of the rendition of the judgments sued on and described in the complaint, or at the time the accounts which were the cause of action in the original suits were created, and that he has no connection with the said firm of E. Leipzeiger & Co. since April, 1866, and since that time he has never resided in the city of New York, and that he had no personal notice of the suits in New York; that he never appeared in person, or by counsel, nor authorized any one to appear for him in the original suits upon which the judgments were rendered against him, which are the foundation of the suits in this case; and that he never, by himself or any other person, or in any way whatever, created any liability, or bound himself to pay the judgments sued on, or the accounts

which were the cause of action in the original suits in New York, and he makes oath that the facts stated in this plea are true.

M. SONNEBORN.

Sworn to and subscribed before me this 30th day of October, A. D. 1869.

A. W. BRANNON,
Notary Public and Ex-Off. J. P.

134 Plea filed November 2nd, 1869.

A. T. SPENCE, *Clerk.*

Plea No. 2.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

Suit in the circuit court of Barbour circuit court.

The defendant, for answer to the amended complaint filed in this case, says:

1. Non assumpsit.
2. The statute of limitation of three years.
3. And for further answer makes oath as follows:

That he is not now, and was not at the time the accounts sued on were created, a member of the firm of Edward Leipzeiger & Co., and that he never was a member of the firm of Edward Leipzeiger & Co. at any time.

MEYER SONNEBORN.

Sworn to & subscribed before me this 22nd day of August, 1871.

A. T. SPENCE, *Clerk.*

Plea filed in office August 22nd, 1871.

A. T. SPENCE, *Clerk.*

Plea No. 3.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

Suit in circuit court of Barbour County, Alabama.

The defendant, in answer to the third amended complaint, says:

135 1. Non assumpsit.

2. The statute of limitations of three years.

3. And for further answer makes oath as follows:

That he is not now, and was not at the time the accounts sued on were created, a member of the firm of E. Leipzeiger & Co.; that he withdrew from said firm in April, 1866, of which fact plaintiffs had notice before the accounts sued on were created.

MEYER SONNEBORN.

Sworn to & subscribed before me this 22nd day of August, 1871.

A. T. SPENCE, *Clerk.*

Filed in office August 22nd, 1871.

A. T. SPENCE, *Clerk.*

And at the fall term, A. D. 1873, of the circuit court of Barbour County, the following judgment was rendered in said case:

A. T. STEWART & Co. } 234. November 17th, 1873.
vs.
MEYER SONNEBORN. }

This day came the parties by their attorneys, and the plaintiffs ask for a continuance on the grounds that the plaintiffs has filed a petition in bankruptcy to have the defendant declared an involuntary bankrupt, which upon a hearing of the same is denied and overruled by the court, and the plaintiffs excepts.

136 A. T. STEWART & Co. } 234. November 18th, 1873.
vs.
MEYER SONNEBORN. }

This day came the parties by their attorneys, and the defendant pleads the general issues, and issues being joined on said plea, then came a jury of good and lawful men, to wit, R. E. Brown, foreman, and eleven others, who say upon their oaths that they find for the defendant. It is therefore considered by the court that the defendant go hence and recover of the plaintiffs the costs in this behalf expended, for which execution may issue.

Certificate of clerk.

THE STATE OF ALABAMA,
Barbour County:

I, A. T. Spence, hereby certify that the foregoing pages, numbered from one to nine inclusive, contain a full, true, and complete transcript of the original summons and complaint, the amended complaint, the pleas of defendant and the verdict of the jury, and the judgment of the court, as the same remains of record and on file in my office, in the case wherein A. T. Stewart & Co. are plaintiffs and Meyer Sonneborn defendant.

Witness my hand and seal of office, at Clayton, this the 2nd day of December, 1873.

[SEAL.] A. T. SPENCE, *Clerk.*

137 THE STATE OF ALABAMA,
Barbour County:

I, J. McCaleb Wiley, one of the judges of the circuit court of the State of Alabama, and the duly elected and qualified circuit court judge of the eighth judicial circuit of said State, of which eighth judicial circuit of said State the county of Barbour, in said State, constitutes a part, and the presiding judge of the circuit court of said county, on the trial in said circuit court of said county of the cause wherein A. T. Stewart & Co. were plaintiffs and Meyer Sonneborn was defendant, hereby certify that A. T. Spence is the clerk of said circuit court in said county, and was such clerk on the trial of said cause, and that the above certificate is signed by said Spence with his own proper and genuine signature, and that the said certificate of said clerk is in due form of law.

Witness my hand this 21st day of January, A. D. 1874.

[L. S.] J. McCALEB WILEY,
Judge of the 8th Judicial Circuit of Alabama.

Filed September 5th, A. D. 1874, @ 2 p. m.
J. W. DIMMICK, *Clerk.*

138 Supreme court of Alabama, June term, 1874.

MONDAY, *June 1st*, 1874.

Be it remembered that a regular term of the supreme court of Alabama was begun and held according to law at the capitol in the city of Montgomery, on the first Monday of June, in the year of our Lord one thousand eight hundred and seventy-four (A. D. 1874), it being the 1st day of said month. Present and presiding as judge of said court, honorable Thomas M. Peters, chief justice; honorable Rob't C. Brickell, associate judge.

Transcript from supreme court of Alabama.

On the 23rd day of July, A. D. 1874, it being a day of said term, the following proceedings were had, to wit:

Supreme court of Alabama.

THURSDAY, *July 23rd*, 1874.

Court met pursuant to adjournment.

A. T. STEWART & CO. *vs.* MEYER SONNEBORN. } 4th div. No. 206.

Appeal from Barbour circuit court.

139 Come the parties, by their attorneys, and the record and the matters therein assigned as error being submitted on the briefs of the counsel for the parties, duly examined and understood, it seems to the court that in the record and proceedings of said circuit court there is no error. It is therefore considered that the judgment of said circuit court be in all things affirmed. It is further considered that said appellants and Eli S. Shorter and Henry R. Shorter, sureties on said appeal-bond, pay the costs accruing on said appeal in this court and in said circuit court.

THE STATE OF ALABAMA,
Montgomery County:

I, Thomas J. Rutledge, clerk of the supreme court of Alabama, hereby certify that the above and foregoing pages contain a full, true, and complete copy of the judgment entry of said court, entered in the case of A. T. Stewart & Co. vs. Meyer Sonneborn, decided at the June term, 1874.

Witness my hand and the seal of said supreme court of this the 25th day of May, A. D. 1875.

[SEAL.]

T. J. RUTLEDGE,
Clerk Supreme Court of Alabama.

Filed this 25th day of May, A. D. 1875.

J. W. DIMMICK, *Clerk.*

140 *Testimony of defendant M. Sonneborn.*

The plaintiff himself was then introduced as a witness, who testified as follows: That he was residing in August, 1873, in the city of Eufaula,

in Barbour County, Alabama; that he had resided there and carried on business as a merchant since March, 1869; that on the 16th day of August, 1873, his stock of goods, wares, and merchandise, and also his books pertaining to his business, were seized by the United States deputy marshal, under a writ of seizure issued out of the bankrupt court at Montgomery, on the petition of defendants, A. T. Stewart & Co.; that his store house was closed up by the marshal, and that his stock of goods was not returned to him until 22nd of October, 1874; that on the 21st day of July, 1873, he took account of his stock of merchandise then on hand, and valuing them at 25 per cent. less than original cost, he estimated them then to be worth $13,000.00; that he did not do much of a credit business, and had outstanding accounts of not exceeding $700.00; that when the goods were redelivered to him in October, 1874, they were in bad condition; the mice and rats had eaten them and ruined many; at New York cost he invoiced the goods returned at $14,000.00; that the stock of goods had been damaged seventy five per cent. from the time they were seized up to the time when they were returned;
141 that when this estimate of value and damage was made by him of the goods on their return, no agent or attorney of A. T. Stewart & Co. was present; that before the seizure of his goods by defendants, he had good credit at the North. He further testified that he was a member of the firm of E. Leipseiger & Co., in New York City, from July, 1865, to April 16th, 1866, when he withdrew from said firm, and gave notice in person to the defendants, A. T. Stewart & Co., of his withdrawal; that he purchased goods of defendants on 24th of August, 1866, in his own name, and shipped them to Mansfield, Ohio (in his own name); that he established himself in business in Mansfield, Ohio, in the fall of 1866, and continued there until he removed to Eufaula, Alabama; that Stewart & Co. never applied to him at Mansfield for payment of any money; that he employed S. H. Dent, as his attorney, to defend the suit brought against him in Barbour County circuit court, by A. T. Stewart & Co., and also to defend against the bankruptcy proceedings, and, in connection with James L. Pugh, to bring this suit for damages; that he had sold, since he had been in Eufaula, as much as $65,000 to $70,000 worth of goods annually, some years at a gross profit of 33⅓ per cent.; the expense account was about 15 per cent.; that he had made no sale, gift, or transfer of his goods before they were seized;
142 that in the latter part of July, 1873, he went to Texas, and rented a storehouse in the city of Dallas, to which place he intended to remove his business, and preparatory thereto had advertised in the city of Eufaula, by posters and handbills, the entire stock of his goods at low prices; that he has never paid any rent for the storehouse he engaged in Texas, but became liable to pay twelve hundred dollars for it, but has never been called on for it, and never began business there because he was broken up in Eufaula by the proceedings in bankruptcy instituted by present defendants.

On cross-examination he testified that he, Elkin Leipseiger, and W. H. Kohn, composed the original firm of E. Leipseiger & Co. from July, 1865, to 16th April, 1866, when he retired; that he had a large experience as a merchant, and had carried on business at various times in Texas, Missouri, Illinois, New York City, Ohio, and at Eufaula, Alabama, and that he always paid one hundred cents on the dollar; that the only notice that he ever gave to A. T. Stewart & Co. of his retirement from the firm of E. Leipseiger & Co. was given to some man in the storehouse of defendants in New York City, whose name was then and
143 is now unknown to witness; that this notice was given shortly after

he left the firm of E. Leipseiger & Co.; that he went into the storehouse, and on the lower floor, where there were a great many employed in various ways, spoke to a man there who seemed to have some kind of authority there, and told him he was no longer a member of the firm of E. Leipseiger & Co. This was the only notice he ever gave himself to the defendants, except the buying of goods in his own name at that house and having them shipped to him in Mansfield, Ohio, in August, 1866. No notice of the dissolution of the firm by his retirement was published in any newspaper. After he retired, in April, 1866, E. Leipseiger and W. H. Kohn continued the business at the same place and under the same old firm name of E. Leipseiger & Co.; that their storehouse was only about two blocks off from the storehouse of defendants in New York. He further testified that in August, 1866, he purchased in his own name from defendants $2,000 worth of goods, and had them shipped to Mansfield, Ohio; that he could not remember whether he paid cash for the goods or not; he inclined to the opinion that they were bought on a credit; that the account was paid by somebody, but by whom he could not remember; that he himself did not pay it,
144 but others did, out of his funds and for him; that either Leipzeiger & Co. or Sonneborn & Co. made said payment for him with his funds he had on deposit with one or the other of those houses. He further testified that when he retired from the firm of E. Leipseiger & Co., in April, 1866, he drew out of that firm sixteen thousand dollars as his share of the assets, partly in goods and partly in money, but could not remember how much of each; that he sold the goods he drew from the firm in New York City to somebody, in bulk, that is, he sold them all together; but who was the purchaser, and what he got for the goods, he could not now remember; that after the goods which had been seized in Eufaula by the marshal had been returned to him in October, 1874, he sold them in bulk to a Mr Sweade for $3,650.00 in cash.

Testimony of A. L. Gaston.

The plaintiff then introduced A. L. Gaston as a witness, who testified that he resided in Eutaula, and was engaged in mercantile pursuit, and had been for twenty-five years or more, and had great experience in said business; that in October, 1874, Meyer Sonneborn, the plaintiff, invited him to go to his storehouse in Eufaula and examine the stock of goods which had been seized and held by the United States marshal, and estimate the extent of the damage the goods had sustained.
145 He went to the storehouse as requested, and his opinion, founded on a thorough examination, was that the goods were damaged seventy-five (75) per cent. In answer to cross-interrogatories he said he never examined the goods at the time they were seized, in August, 1873, and does not know what was their condition at that time, nor what part, if any, of the stock was composed of old goods.

Testimony of D. G. Stearne.

D. G. Stearne was then introduced as witness for plaintiff, who said he was a merchant, and had been for a great many years; resided in Eufaula. Examined the goods thoroughly after they had been returned to Sonneborn, in October, 1874, and estimated the damage at sixty-five per cent. Did not examine the goods especially before the marshal took possession of them, in August, 1873.

Testimony of E. W. Bostwick.

E. W. Bostwick, another witness for the plaintiff, testified that he had been merchandising in Eufaula since 1867, and prior to that time in Georgia for fifteen or sixteen years; that he also examined plaintiff's goods when they were released from the seizure of the marshal, in connection with Stearne and Gaston; was so engaged for one-half to three-quarters of an hour; did not examine as thoroughly as Gaston and Stearne, and that he estimated the damages at seventy-five
146 per cent. He did not know the condition of the goods when they were first taken by the marshal, but agreed with Gaston and Stearne that when the goods were returned they were damaged sixty-five per cent.

Testimony of J. C. Boylston.

J. C. Boylston, as witness for plaintiff, stated that he estimated the damages to the goods while the marshal had them, at about seventy-five per cent.; but knew nothing of the condition of the goods when they were first seized; had been before that clerk of plaintiff, and knew he was a careful merchant, and kept his goods in good order and very nicely.

Testimony of Marsh King.

Marsh King was next introduced as a witness for plaintiff, who testified that at the time the goods of plaintiff were taken possession of by the United States marshal, he was employed as a clerk in the store-house of plaintiff; that he had been there for some years; that at the time of the seizure, in August, 1873, business was very dull, and very light sales were being made in the store; that the stock of goods was kept in good order, and properly arranged on the shelves; some were packed in boxes; that he knew of no sale or transfer of the goods to any one by the plaintiff; that he heard plaintiff say he did not owe the defendants
147 anything, and never intended to pay them; this was before the plaintiff left for Texas, in July, 1873, and before the store-house was closed up; but that he never communicated this fact to defendants at all, and only to Mess'rs Shorter & Bro. since this suit was begun; that plaintiff kept one of the cleanest and nicest stores in Eufaula; that every Monday morning the goods were thoroughly cleaned and dusted, and that the stock of goods were in good order when seized by the marshal in August, 1873.

Testimony of J. G. L. Martin.

Plaintiff then introduced J. G. L. Martin, who testified that he was a banker in Eufaula, and had transacted business for the plaintiff up to the time he was closed out by the marshal, in August, 1873; that plaintiff's credit and standing as a merchant was good, until after his goods were seized under the bankruptcy proceedings instituted against him by the defendants; and that he always met his paper promptly at maturity; after that time he lost his credit, by the institution of the bankrupt proceedings against him by defendants; that at the time said stock of goods was seized, plaintiff had money on deposit with witness, in his own name.

The plaintiff next introduced as his testimony, the depositions
148 of the following-named witnesses, to wit: Louis Young, Louis Wallstein, Ferdinand Forch, Max M. Stern, S. Earnest, V. H.

Rothchild, Max Rotschild, Simon Gutman, Moritz Leipsieger, Henry Price, Benjamin Burgunder, David Arubach, Mike Arubach, M. Friedman, M. Hinnuman, S. Hinnuman, A. G. Hultzer, Charles G. Hultzer, David G. Hultzer, (all of which are here referred to and adopted as a part of this bill of exceptions.)

Suit brought in the circuit court of Barbour County, Ala., and transfer'ed on petition and application of defendants to the United States circuit court at Montgomery, Alabama.

MEYER SONNEBORN
vs.
A. T. STEWART & CO.

Interrogatories to be propounded to, and answered by the following named persons, who are residents of the city of New York and State of New York, and who are material witnesses for the plaintiff in the above named suit, to wit: Louis Young, No. 18 Walker street; Louis Wallstein and Samuel Lillenthal, 106 Franklin street; Ferdinand Forch and Max M. Sterne, 449 Broadway; E. Earnest, 536 Broadway; V. H. Rothchild, Marx Rothchild and Simon Gutman, 46 Leonard street; Moritz Leipseiger, 216 Church s't, and Edward Dittman, 41 White street.

1. Interrogatory 1st. What is your business or occupation, and how long have you been engaged therein?

2. Interrogatory 2nd. Do you know the plaintiff in this suit, Meyer Sonneborn? Please answer in what business or occupation he was engaged up to August, 1873.

3. Interrogatory 3rd. Do you know the credit and standing as a merchant of said Sonneborn, up to August, 1873, and since that
149 time? If you do, please teli what it was, up to August, 1873, and what it has been since. For what amount could he have obtained credit with you and your business houses up to August, 1873? Did anything happen to said Sonneborn about that time, which impaired his credit? If so, what was it?

4. Interrogatory 4th. Do you know anything of defendants, A. T. Stewart & Co., seizing said Sonneborn's stock of goods in August, 1873, and what effect said seizure had upon the credit and standing of said Sonneborn as a merchant? If you do, please tell all you know about it.

5. Interrogatory 5th. Has plaintiff, Sonneborn, applied to you or any one of you, or to your business houses for credit since August, 1873; and, if he did, did you sell him or refuse to sell to him? If you refused, why did you refuse? Tell all about it.

6. Interrogatory 6th. What were your means of selling plaintiff, Sonneborn, a stock of goods on a credit, and to what extent was his credit good with you prior to your hearing of the proceedings by the defendants against him in the bankrupt court, at Montgomery, Ala.? Tell all within your knowledge as to the credit and standing of said Sonneborn as a merchant, in the city of New York, and about his ability to procure goods and merchandise on a credit, and how that character and standing and 'redit was affected, if at all, by the said proceedings against him in bankruptcy.

S. H. DENT AND J. L. PUGH,
Att'ys for Pl'ff.

We sugggest the name of J. Albert Englehart, 320 Broadway, New York, as a suitable person to act as commissioner to take and certify the answers of the witnesses.

S. H. DENT AND J. L. PUGH,
Att'ys for Pl'ff.

150 We accept service of the within interrogatories, and waive copy and affidavit of residence and materiality of witnesses, and consent that commission issue.

April 12th, 1875.

SHORTER & BROTHER,
Att'ys for Def'ts.

Cross-interrogatories.

1st. Where did you first become acquainted with the plaintiff, Meyer Sonneborn? Did you know him when resided in Texas, and carried on mercantile business there? How long did he continue in business in Texas before he failed?

2nd. Did you know him when he resided in Missouri & did business in that State? How long did he remain there before he broke?

3rd. Did you know him when he was member of the firm of E. Leipseiger & Co., in New York City? If yea, when was that? How long did he continue in that firm before the firm became insolvent?

4th. Did you know Sonneborn when he did business in Mansfield, Ohio? How long did he remain in Mansfield, and carry on his business there before he broke?

5th. Where did he go after leaving Mansfield? About what time did he "tie up," or locate in Eufaula, Alabama?

6th. When did you sell him the first bill of goods on a credit? Where was he doing business then? What was the amount of the bill? What length of credit did you give him? State all the different times you ever sold him goods on a credit: the amount of each bill sold; the time of the credits, & whether all of said accounts were paid at maturity. How often and at what times have you refused him credit?

7th. Are you in any way related by blood or marriage to the said plaintiff? If yea, state in what manner. What is your religious
151 faith, if you have any? Are you a Jew, gentile, Protestant, or Catholic?

SHORTER & BROTHER,
Att'ys for Defendants.

UNITED STATES OF AMERICA:

Circuit court of the United States for the middle district of Alabama.

To I. Albert Englehart, , or either of you:

Know ye that we, having full faith in your prudence and competency, have appointed you commissioners, and by these presents do authorize you, or any one or more of you, at such time and place as you may appoint, to call before you and examine Lewis Young, 18 Walker st.; Louis Wollstien & Samuel Lilienthal, 106 Franklin st.; Ferdinand Forsch and Max M. Stern, 449 Broadway; S. Earnest, 536 Broadway; V. H. Rothschild, Marx Rothschild & Simeon Gutman, 46 Leonard street; Moritz Leipzeiger, 216 Church st., & Edward Dittman, 44 White street, as witness in behalf of plaintiff, in a case pending in the circuit court

of the United States for the middle district of Alabama, at Montgomery, wherein Meyer Sonnborn is plaintiff, and A. T. Stewart & Co. are defendants, on oath, to be by you administered, upon interrogatories and cross-interrogatories annexed to this commission; to take and certify the deposition of the witness, and return the same to our said circuit court, to be holden on the first Monday in May next, under your hands & seals.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this first Monday of November, A. D. one thousand eight hundred and seventy-four.

Issued the 13 day of April, 1875.

[SEAL.] J. W. DIMMICK,
Clerk U. S. Circuit Court, Middle Dist. of Ala.

Deposition of Solomon Earnest, witness sworn and examined under oath, and by virtue of a commission, issued out of the circuit court of the United States for the middle district of Alabama, in a certain cause therein depending, between Meyer Sonneborn, plaintiff, and Alexander T. Stewart & Co., defendants.

152 *Deposition of Solomon Earnest.*

SOLOMON EARNEST, of No. 166 East 61st street, in the city of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

1st. To the first interrogatory he saith: I am in the wholesale millinery business, at No. 536 Broadway, in the city of New York. I have been engaged in said business in said city for the last eight years.

2nd. To the second interrogatory he saith: I know the plaintiff, Meyer Sonneborn, in this suit, and know that he was in the general merchandise business up to August, 1873.

3rd. To the third interrogatory he saith: I do know the credit and standing of said Sonneborn up to August, 1873, and it was very good; and since that time it has been entirely destroyed. Any amount that he would have bought of me, I would have given him credit for up to August, 1873. About that time I understood A. T. Stewart & Co. had proceeded against him, and put him into bankruptcy, which materially affected his credit.

4th. To the fourth interrogatory he saith: I heard that A. T. Stewart & Co. had seized the stock of goods of Meyer Sonneborn in August, 1873, and that necessarily stopped his credit at once, and affected his standing as a merchant.

5th. To the fifth interrogatory he saith: Mr. Sonneborn called at our house about goods, and as I understood that he had been put into bankruptcy by A. T. Stewart & Co., I of course concluded not to sell him any.

153 6th. To the sixth interrogatory he saith: I could have furnished him with any amount he wanted prior to hearing of the proceeding in bankruptcy of A. T. Stewart & Co., and would have cheerfully sold him goods on a credit of four months to any amount he would have bought of me. I never limited him in buying, as I always considered him an honest man. I think that the credit and standing of Meyer Sonneborn, prior to the bankruptcy proceedings, was very good, & that he could easily get all the goods he wanted on credit. I refer, of course, to the time before proceedings were commenced against him by A. T.

Stewart & Co.; and the proceedings by Stewart & Co. ruined his credit & standing as a merchant.

1st. To the first cross-interrogatory he saith: I first became acquainted with Meyer Sonneborn in S't Louis, Missouri, in the year 1864. I did not know him when he resided in Texas. I don't know whether Meyer Sonneborn lived in Texas, or whether he failed there.

2nd. To the second cross-interrogatory: I knew him when he resided in Missouri & did business there. He never failed in Missouri. He gave up business there and went to Ohio.

3rd. To the third cross-interrogatory he saith: I did not know him when he was a member of the firm of E. Leipzeiger & Co., in New York City.

4th. To the fourth cross-interrogatory he saith: I know that he was in business in Ohio, & remained there until after the death of his wife, & then he moved to Eufaula, Alabama, I believe. I don't think he broke in Mansfield, Ohio; he sold out there.

5th. To the fifth cross-interrogatory he saith: After leaving Mansfield he went to Eufaula, Alabama; this was about 1869.

6th. To the sixth cross-interrogatory he saith: About 1869, when he went to Eufaula, Alabama, I sold him the first bill of goods on credit.
He was just then commencing business at Eufaula. I don't
154 recollect the amount of the bill, as I have not my books with me.
The credit was four months. I cannot state the number of bills, or the different times I sold them, as my books are at my store. I can't bear them in mind. For the same reason I don't remember the amounts of the bills sold. The credits were four months. All bills were paid at maturity. I have spoken before of the only time I refused him credit.

7th. To the seventh cross-interrogatory he saith: I am not related to him by blood or marriage. I am a Hebrew, and that is my faith.

SOLOMON EARNEST.

I, the commissioner in said commission named, do hereby certify that the evidence of the witness, Solomon Earnest, was taken down under oath, and subscribed by him in my presence on the 4th day of May, 1875, at my office, No. 320 Broadway, in the city of New York, county of New York and State of New York, and that I have personal knowledge of said witness, and I am not counsel in the cause, or in any manner interested in the result thereof.

Witness my hand & seal.

[SEAL.] J. ALBERT ENGLEHART,
Commissioner.

Deposition of Victor Henry Rothschild.

Deposition of Victor Henry Rothschild, witness sworn and examined under oath, and by virtue of a commission issued out of the circuit court of the United States for the middle district of Alabama, in a certain cause therein depending between Meyer Sonneborn, plaintiff, and Alexander T. Stewart & Co., defendants.

VICTOR HENRY ROTHSCHILD, of No. 124 East 70th street, in the city of New York, being duly sworn to speak the truth, the whole
155 truth, and nothing but the truth, doth depose and say as follows:
1st. To the first interrogatory he saith: I am a manufacturer of shirts, and a member of the firm of Rothschild Brothers & Gutman, 46 & 48 Leonard street, New York City, and have been engaged in such business since the fall of 1863.

2nd. To the second interrogatory he saith: I know the plaintiff, Meyer Sonneborn, and he was engaged in the general merchandise business up to August, 1873.

3rd. To third interrogatory he saith: I do know the credit and standing of Meyer Sonneborn as a merchant up to August, 1873; up to that time it was very good; and after that time, and since, we have doubted his credit. He could have bought of us on credit up to August, 1873, to any sum his business needed. In August, 1873, there were several inquiries made of us regarding the standing & credit of Meyer Sonneborn, & in connection with the trouble he got into through the seizure by A. T. Stewart & Co., and from such seizure forward we commenced to doubt his credit. This doubt was caused entirely by such seizure.

4th. To the fourth interrogatory he saith: I do know that A. T. Stewart & Co. seized the stock of goods of Meyer Sonneborn in August, 1873, and it had a very disastrous effect upon the standing & credit of said Sonneborn as a merchant. We would not sell him any goods after such seizure, and because of said seizure we refused him credit.

5th. To the fifth interrogatory he saith: Meyer Sonneborn did apply to our house for credit since August, 1873, and we refused to sell him any goods because his stock of goods was seized, and he was put into bankruptcy by A. T. Stewart & Co.

6th. To the sixth interrogatory he saith: I could have sold him at any time any amount. Our stock, when the season commences,
156 is from four to five hundred thousand dollars. Prior to said seizure & bankruptcy proceedings he could have had of us all the goods that he required in his business in our line. I have never heard of any one hesitating to sell him all the goods he wanted during the time he was engaged in business, and I think that prior to August, 1873, & before the seizure and bankruptcy proceedings, he enjoyed a very good credit, & had a good standing as a merchant, which was ruined by said proceedings by Stewart & Co.

1st. To the first cross-interrogatory he saith: I first became acquainted with him when he was a member of the firm of E. Leipzeiger & Co., in New York City. I did not know him when he resided in Texas and carried on business there. I don't know whether he ever failed, either in Texas or any other place.

2nd. To the second cross-interrogatory he saith: I did not know him when he resided in Missouri.

3rd. To the third cross-interrogatory he saith: I knew him when he was a member of the firm of E. Leipzeiger & Co., in New York City. I think it was in 1865 or 1866.

4th. To the fourth cross-interrogatory he saith: I knew him while he done business in Mansfield, Ohio. I don't know that he broke there, or how long he carried on business there.

5th. To the fifth cross-interrogatory he saith: After leaving Mansfield he went to Eufaula, Alabama. I think it was in 1869.

6th. To the sixth interrogatory he saith: I sold him the first bill of goods in the spring of 1870, in the city of New York. He was then doing business in Eufaula, Alabama. I don't know the exact amount of the bill. I gave him credit for four months. From said spring
157 forward we sold him goods every season up to August, 1873, when the seizure took place. I cannot state the exact dates of all the bills, as I have not my books with me. All bills, except one due in the fall of 1873, were promptly paid at maturity. I only refused him credit once, which was in the fall of 1873.

7th. To the seventh cross-interrogatory he saith: I am not related to him by blood or marriage.

8th. To the eighth cross interrogatory he saith: I am an Israelite, and of the Hebrew faith.

VICTOR HENRY ROTHSCHILD.

I, the commissioner in said commission named, do hereby certify that the evidence of the witness, Victor Henry Rothschild, was taken down under oath, and subscribed by him in my presence, on the 6th day of May, 1875, at my office, No. 320 Broadway, in the city of New York, county of New York, and State of New York, and that I have personal knowledge of said witness, and I am not counsel in this cause, or of any kin to any of the parties to the cause, or in any manner interested in the result thereof.

Witness my hand & seal.

[SEAL.] I. ALBERT ENGLEHART,
Commissioner.

Deposition of Ferdinand Forsch.

Deposition of Ferdinand Forsch, witness, sworn and examined under oath, and by virtue of a commission issued out of the circuit court of the United States for the middle district of Alabama, in a certain cause therein depending between Meyer Sonneborn, plaintiff, and Alexander T. Stewart & Co., defendants.

FERDINAND FORSCH, of No. 164 East 61st street, New York
158 City, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

1st. To the first interrogatory he saith: My business & occupation is a wholesale dealer in hats & caps, and I have been engaged in said business for the last 12 years.

2nd. To the second interrogatory he saith: I know the plaintiff in this suit, Meyer Sonneborn, and he was engaged in general merchandise business up to August, 1873.

3rd. To third interrogatory he saith: I do; both his mercantile standing and credit was very good up to August, 1873, but since that time I do not believe he has been able to get any credit. I would, up to August, 1873, have given him credit for more than $5,000. About August, 1873, M'r Sonneborn was put into bankruptcy by A. T. Stewart & Co., & his property seized, which entirely destroyed his credit.

4th. To the fourth interrogatory he saith: I do; I heard, and it was a matter of common notoriety, that A. T. Stewart & Co. had seized the stock of goods of Meyer Sonneborn in August, 1873, & it had a very bad effect on the standing and credit of said Sonneborn as a merchant.

5th. To the fifth interrogatory he saith: Meyer Sonneborn applied to me for credit since August, 1873; about when I do not remember, and of course I had to refuse it, because he had no business, and was without any pecuniary means.

6th. To the sixth interrogatory he saith: I do a large wholesale hat and cap business, No. Broadway. I could sell him $50,000 if he was willing to buy that amount, and I was satisfied with his pecuniary condition to purchase that amount, and I would sell him
159 $5,000 worth of goods without hesitation before I heard of the seizure of A. T. Stewart & Co.: and before the proceedings by Stewart & Co. against him in the bankrupt court at Montgomery,

Alabama, Meyer Sonneborn had a good standing & credit in New York as a merchant, and he could before the said proceedings procure plenty of goods and merchandise on credit. His standing and credit was destroyed by said proceedings in bankruptcy against him.

1st. To the first cross-interrogatory he saith: I knew Meyer Sonneborn for many years; I cannot tell the exact year; I knew him when he resided in Texas and carried on business there; I don't know how long he continued in business there, or when he failed—I don't believe that he ever failed there; I don't know how I can remember all those things as it is too long ago.

2nd. To the second cross interrogatory he saith: I have known him for many years past, and whether during the time I have known him he resided at Missouri I do not remember; I am not certain whether he did business there; I have an impression he *he* did; I cannot swear positively whether he did or not. I don't know that he broke there. I never heard of it.

3rd. To the third cross-interrogatory he saith: I knew him when he was a member of the firm of E. Leipziger & Co. in New York City. It was about 1865 or 1866. Long before the firm of E. Leipziger & Co. became insolvent he withdrew from said firm. I don't know the particular length of time he continued in said firm.

4th. To the fourth cross-interrogatory he saith: I knew him
160 when he did business in Mansfield, Ohio. I don't know how long he did business there, or whether he broke while there. I am positive he did not break there.

5th. To the fifth cross-interrogatory he saith: After leaving Mansfield, Ohio, he went to Eufaula, Alabama. He located in Eufaula about 1869.

6th. To the sixth cross-interrogatory he saith: When I sold him goods on credit he was doing business at Eufaula, Alabama. I think it was about . I cannot now tell you the exact amount of the bill, as I have not my books with me. The credit was for four months. I cannot state all the times I sold him on credit, as my books are at my store, and I shall have to look at them. I cannot state the amount of each bill for the same reason. All the credits were for four months, & all of the amounts he owed me were paid at maturity. He called on us for credit after the seizure and bankruptcy proceedings by A. T. Stewart & Co. I think it was August, 1873, he was put into bankruptcy. We refused him credit, as he had no business, & had been put into bankruptcy and his stock of goods seized by Stewart & Co.

7th. To the seventh cross-interrogatory he saith: I am not related to Meyer Sonneborn either by blood or marriage.

8th. To the eighth cross interrogatory he saith: I am of the Jewish eligion, and an Israelite.

F. FORSCH.

I, the commissioner in said commission named, do hereby certify that the evidence of the witness, Ferdinand Forsch, was taken
161 down under oath, and subscribed by him in my presence, on the 5th day of May, 1875, at my office, No. 320 Broadway, in the city of New York, county of New York, and State of New York, and that I have personal knowledge of said witness, and I am not counsel in the cause, or of any kin to any of the parties to the cause, or in any manner interested in the result thereof.

Witness my hand & seal.

I. ALBERT ENGLEHART, [SEAL.]
Commissioner.

Deposition of Max Rothschild.

Deposition of Marx Rothschild, witness, sworn and examined under oath, and by virtue of a commission out of the circuit court of the United States for the middle district of Alabama, in a certain cause therein depending between Meyer Sonneborn, plaintiff, and Alexander T. Stewart & Co., defendants.

MARX ROTHSCHILD of the city of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

1st. To the first interrogatory he saith: I am a manufacturer of shirts, and have been engaged in that business for the last six years.

2nd. To the second interrogatory he saith: I know the plaintiff, Meyer Sonneborn, who was engaged in the general merchandise business up to August, 1873.

3rd. To the third interrogatory he saith: I think the standing and credit of Sonneborn, up to August, 1873, was very good, and since that time I can't say anything about it. Our house would cheerfully have sold him all the goods he wanted in his business. I believe about
162 that time his stock of goods was seized and he was put into bankruptcy by A. T. Stewart & Co.

4th. To the fourth interrogatory he saith: Our house heard of the seizure of his stock of goods, and that he was put into bankruptcy by Stewart & Co., about August, 1873, and after that his credit with us was questioned.

5th. To the fifth interrogatory he saith: As I don't attend to the credits in our house, I don't know whether he applied for credit.

6th. To the sixth interrogatory he saith: Our house carries a stock of goods of four or five hundred thousand dollars all the year round, sometimes a great deal more. I answered that up to August, 1873, his credit was good with us: I mean until the seizure by Stewart & Co. The standing & credit of Sonneborn as a merchant, prior to the seizure, was considered good, & I think he could have obtained all the goods he wanted, at least with us. His credit and standing as a merchant was broken up on the seizure & bankruptcy proceedings against him.

1st. To the first cross-interrogatory he saith: I first became acquainted with Meyer Sonneborn in March, 1870. I did not know him when he resided in Texas, nor do I know whether he carried on business there. I don't know whether he carried on business or failed there.

2nd. To the second cross-interrogatory he saith: I don't know whether he resided, did business, or failed in Missouri. I did not know him then.

3rd. To the third cross-interrogatory he saith: I don't know whether he was a member of the firm of E. Leipzeiger & Co. I did not know him then.

163 4th. To the fourth cross-interrogatory he saith: I did not know Sonneborn when he resided in Mansfield, Ohio. As I did not know him, I cannot say how long he remained there, or whether he ever had been there. I don't know whether he failed there.

5th. To the fifth cross interrogatory he saith: I don't know whether he has been at Mansfield, Ohio.

6th. To the sixth cross-interrogatory he saith: Our house sold him the first bill of goods on credit in the city of New York; and I think the first bill was in March, 1870. At that time he was doing business

at Eufaula, Alabama. I can t recollect the amount of the bill. We give him four months' credit. My books are at home, and therefore I cannot specify the different credits, or the bills sold to him. I have not the amount of each or any bill with me. My books are at the store. Credits were always four months. All accounts were paid at maturity except one that fell due in the fall of 1873. I answered what I now recollect about refusing him credit.

7th. To the seventh cross-interrogatory he saith: I am not related by blood or marriage to Meyer Sonneborn.

8th. To the eighth cross-interrogatory he saith: I am of the Jewish faith, and a Hebrew.

MARX ROTHSCHILD.

I, the commissioner in said commission named, do hereby certify that the evidence of the witness, Marx Rothschild, was taken down under oath, and subscribed by him in my presence, on the 8th day of May, 1875, at my office, No. 320 Broadway, in the city of New York, county of New York, State of New York, and that I have personal
164 knowledge of said witness, and am not counsel in the cause, or of any kin to any of the parties to the cause, or in any manner interested in the result thereof.

Witness my hand and seal.

[SEAL.] I. ALBERT ENGLEHART,
Commissioner.

Deposition of Moritz Leipzeiger.

Deposition of Moritz Leipziger, witness, sworn & examined under oath, and by virtue of a commission issued out of the circuit court of the United States for the middle district of Alabama, in a certain cause therein depending between Meyer Sonneborn, plaintiff, and Alexexander T. Stewart & Co., defendants.

MORITZ LEIPZEIGER, of the city of New York, being duly sworn to speak the truth, the whole truth, & nothing but the truth, doth depose and say as follows:

1st. To the first interrogatory he saith: I am a dealer in Italian cloths—alpacas, velvets, velveteens, and all sorts of linings, and have been engaged in such business for more than fifteen years.

2nd. To the second interrogatory he saith: I know the plaintiff, Meyer Sonneborn, and he was engaged in the general merchan-
165 dise business up to August, 1873.

3rd. To the third interrogatory he saith: I do know his credit & standing as a merchant was very good, and since August, 1873, it has been questioned. I would up to August, 1873, have given him all the goods he would buy of me. At that time he was seized by Stewart & Co., which effected his credit.

4th. To the fourth interrogatory he saith: About August, 1873, his stock of goods was seized by Stewart & Co., and he was thrown out of business, and that effected his credit & standing as a merchant.

5th. To the fifth interrogatory he saith: Meyer Sonneborn called on me to buy goods on credit since August, 1873, and I did not care to sell him anything, since Stewart & Co. had seized his goods and put him in bankruptcy.

6th. To the sixth interrogatory he saith: I always carry a stock of

goods of from $25,000 to $35,000. Prior to the proceedings in bankruptcy he could have received all the goods he wanted. His standing & credit as a merchant in the city of New York was very good; and he could procure all the goods he would need in his business on credit; and the proceedings in bankruptcy broke up his credit.

166 1st. To the first cross interrogatory he saith: I first became acquainted with Meyer Sonneborn when he came to New York from Texas. I did not know that he carried on business there; I never heard that he failed in Texas; I don't believe he did.

2nd. To the second cross-interrogatory he saith: I knew him when he resided in Missouri and did business in that State. I don't believe that he ever failed there.

3rd. To the third cross-interrogatory he saith: I knew him when he was a member of the firm of E. Leipziger & Co., in New York City, which was in 1865. I don't recollect how long he continued in that firm. I know he was out of it long before it became insolvent.

4th. To the fourth cross-interrogatory he saith: I knew Sonneborn when he did business in Mansfield, Ohio; I don't believe he broke there.

5th. To the fifth cross-interrogatory he saith: After leaving Mansfield, I think he went to Eufaula, Alabama, which was about 1869.

6th. To the sixth cross-interrogatory he saith: The first bill of goods on credit that I sold him was at New York City. When I sold him the first bill, he was doing business at Eufaula, Alabama; I don't recollect the amount of bill. I will have to examine my books. I think

167 the credit was four months. I can't state all the different times I sold him on credit, with' a long examination of my books; I can't state the amount of each bill sold, for the same reason. The credits were four months; all bills were paid at maturity. I only refused him credit once, which was about six months or a year ago.

7th. To the seventh cross-interrogatory he saith: I am not related to him by blood or by marriage.

8th. To the eighth cross-interrogatory he saith: I am of the Jewish faith; I am a Hebrew.

MORITZ LEIPZIGER.

I, the commissioner in said commission named, do hereby that the evidence of the witness, Moritz Leipziger, was taken down under oath and subscribed by him in my presence, on the 7th day of May, 1875, at my office, No. 320 Broadway, in the city of New York, in the county of New York, and in the State of New York, and that I have personal knowledge of said witness, and I am not counsel in the cause, or of any kin to any of the parties to the cause, or in any manner interested in the result thereof.

Witness my hand & seal.

[SEAL.] I. ALBERT ENGLEHART,
Commissioner.

168 *Deposition of Max M. Sterne.*

Deposition of Max M. Stern, witness, sworn and examined under oath, & by virtue of a commission issued out of circuit court of the United States for the middle district of Alabama, in a certain cause therein depending between Meyer Sonneborn, plaintiff, and Alexander T. Stewart & Co., defendants.

MAX M. STERN, of the city of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

1st. To the first interrogatory he saith: I am in the wholesale hat & cap business, and have been engaged in said business for the last four years.

2nd. To the second interrogatory he saith: I know the plaintiff, Meyer Sonneborn, and I believe he was engaged in the general merchandise business until August, 1873.

3rd. To the third interrogatory he saith: His credit and standing as a merchant was very good up to August, 1873, and since that time I don't believe he could have obtained any credit. He could have obtained credit with our house for about $5,000 up to August, 1873, and at that time his stock of goods was seized and he was put into bankruptcy, which effected his credit.

169 4th. To the fourth interrogatory he saith: I have already said that A. T. Stewart & Co. seized his stock of goods about August, 1873, & that it ruined his credit and standing as a merchant.

5th. To the fifth interrogatory he saith: He applied for credit since August, 1873, & we refused him credit because he had no business, and because his business had been broken up by Stewart & Co.

6th. To the sixth interrogatory he saith: We could have sold him in our line all the goods he wanted. His credit was good with our house for five thousand dollars before the seizure already spoken of. All I can say is that his credit and standing was good before the said seizure and bankruptcy proceedings, and that he could procure goods, and that after such seizure & bankruptcy proceedings his credit was gone.

1st. To the first cross-interrogatory he saith: I did not know him in Texas, or while, if ever, he was there.

2nd. To the second cross interrogatory he saith: I did not know him in Missouri, nor while, if ever, he did business there. I do not know that he broke there.

3rd. To the third cross interrogatory he saith: I did not know him while he was a member of the firm of E. Leipziger & Co. I don't——

170 4th. To the fourth cross interrogatory he saith: I do not know when he was in business in Mansfield, Ohio; I don't know how long he remained there, or carried on business there, or that he ever broke there.

5th. To the fifth cross-interrogatory he saith: As I did not know him when he was at Mansfield, I could not say when he left there; I think he located at Eufaula about 1869 or '70.

6th. To the sixth cross-interrogatory he saith: We sold him the first bill of goods on credit at New York City; I think he was doing business then at Eufaula, Alabama; I cannot recollect the amount of the bill; we gave him four months' credit. Oh! I can't tell all the different times we sold him on credit without my books. I don't recollect the amount of each bill sold. The credits were four months. All accounts were paid at maturity. After he had been seized by Stewart & Co. we refused him once, that is all.

7th. To the seventh cross interrogatory he saith: I am not related to him by blood or marriage.

8th. To the eighth cross-interrogatory he saith: I am of the Hebrew faith—I am of the Jewish persuasion.

MAX M. STERN.

171 I, the commissioner in said commission named, do hereby certify that the evidence of the witness, Max M. Stern, was taken down under oath, and subscribed by him in my presence, on the 8th day of May, 1875, at my office, No. 320 Broadway, in the city of New

York, county of New York, State of New York, and that I have personal knowledge of said witness, and I am not counsel in the cause, or of any kin to any of the parties to the cause, or in any manner interested in the result thereof.

Witness my hand and seal.

[SEAL.] I. ALBERT ENGLEHART,
Commissioner.

Deposition of Simeon Gutman.

Deposition of Simeon Gutman, witness, sworn and examined under oath, and by virtue of a commission out of the circuit court of the United States for the middle district of Alabama, in a certain cause therein depending between Meyer Sonneborn, plaintiff, and Alexander T. Stewart & Co., defendants.

SIMEON GUTMAN, of the city of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

1st. To the first interrogatory he saith: I am engaged in the manufacturing of shirts, &c., and have been engaged therein for the last six years.

172 2nd. To the second interrogatory he saith: I know the plaintiff, Meyer Sonneborn, and he was engaged in the general merchandise business.

3rd. To the third interrogatory he saith: I think the standing & credit of the said Sonneborn, up to August, 1873, was unquestioned, and since that time I don't know anything about it. I should have sold him with pleasure all that he could require of our line in his business. About that time he was seized & put into bankruptcy by A. T. Stewart & Co.

4th. To the fourth interrogatory he saith: I heard of A. T. Stewart & Co. seizing the stock of goods of Meyer Sonneborn, and after such seizure his credit was effected with our house.

5th. To the fifth interrogatory he saith: As I don't know whether he applied to our house, I cannot answer this interrogatory.

6th. To the sixth interrogatory he saith: Our house carries a stock of goods from four to five hundred thousand dollars all the year through, sometimes more than that. I have answered his credit was good with us for all his business wants prior to hearing of the proceedings in bankruptcy by A. T. Stewart & Co., at Montgomery, Alabama. The standing & credit of said Sonneborn as a merchant was generally good, and he could have obtained all the goods required of our house, as we had full faith in him. His standing & credit was effected imme-

173 diately upon the bankruptcy proceedings—at all events with us.

1st. To the first cross-interrogatory he saith: I first became acquainted with Meyer Sonneborn about March, 1870. I did not know him when he resided in Texas, and carried on a mercantile business there, if he ever did. I don't know how long he remained in Texas, if he ever was there, nor whether he ever failed.

2nd. To the second cross-interrogatory he saith: If he ever resided in Missouri & did business there I do not know anything about it. As I did not know him then, I don't know whether he ever failed there.

3rd. To the third cross-interrogatory he saith: I did not know him while he was a member of the firm of E. Leipziger & Co.

4th. To the fourth cross-interrogatory he saith: I did not know Sonneborn when he did business in Mansfield, Ohio. As I did not know him there I cannot tell how long he remained there, or whether he ever was there. I never heard that he broke there.

5th. To the fifth interrogatory he saith: I don't know whether he was at Mansfield, Ohio, or where he was prior to 1870, when he did business at Eufaula, Alabama.

6th. To the sixth cross-interrogatory he saith: We sold him the first bill of goods on a credit at New York City. At Eufaula, Alabama,
174 he was doing business then. I don't know the exact amount of the bill; I think we gave him four months; as I have not my books here I cannot specify all the different times we sold him on credit. I don't know the amount of each bill; the credit was four months; all accounts were paid except the one due in the fall of 1873. I have answered what I know about refusing him credit.

7th. To the seventh interrogatory he saith: I am not related by blood or marriage to said plaintiff.

8th. To the eighth interrogatory he saith: I am of the Hebrew faith. I am a Hebrew.

SIMEON GUTMAN.

I, the commissioner in said commission named, do hereby certify that the evidence of the witness, Simeon Gutman, was taken down under oath, and subscribed by him in my presence, on the 6th day of May, 1875, at my office, No. 320 Broadway, in the city of New York, county of New York and State of New York, and that I have personal knowledge of said witness, and I am not counsel in the cause, or of any kin to any of the parties to the cause, or in any manner interested in the result thereof.

Witness my hand & seal.
[SEAL.] I. ALBERT ENGLEHART,
Commissioner.

175 *Deposition of Louis Wollstein.*

Deposition of Louis Wollstein, witness, sworn and examined under oath, and by virtue of a commission issued out of the circuit court of the United States for the middle district of Alabama, in a certain cause therein depending between Meyer Sonneborn, plaintiff, and Alexander T. Stewart & Co., defendants.

LOUIS WOLLSTEIN, being duly sworn to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

1st. To the first interrogatory he saith: I am a manufacturer of felt skirts, and have been engaged in business for the last seven years.

2nd. To the second interrogatory he saith: I know Meyer Sonneborn, the plaintiff in this suit, and he was engaged in the general merchandise business up to August, 1873.

3rd. To the third interrogatory he saith: The credit and mercantile standing of Meyer Sonneborn up to August, 1873, was very good, and since that time he has had no credit. And up to August, 1873, he could have had credit with me to any amount he would buy, as his credit was very good. I would, without hesitation, sell him five thousand dollars worth of goods before he was seized by Stewart. After he was seized by Steward, of course it had a bad effect, & he lost his credit by such seizure.

4th. To the fourth interrogatory. I know that A. T. Stewart & Co. seized his stock of goods in August, 1873, & that such seizure ruined his credit as a merchant.

176 5th. To the fifth interrogatory he saith: He did not apply to our house for credit since August, 1873, and if he had done so, we would have refused to sell him, because his stock was seized by A. T. Stewart & Co., & many rumors were afloat in the city about the seizure.

6th. To the sixth interrogatory he saith: I do a very large felt skirt business in the city of New York, and his credit was good with me to $5,000 at least prior to the seizure by Stewart & Co., throwing him into bankruptcy at Montgomery, Alabama. M'r Sonneborn always enjoyed a good credit in New York, and could procure plenty of goods, & had a good credit, and his standing, credit & character were entirely destroyed by the bankruptcy proceeding instituted by Stewart & Co.

1st. To the first cross-interrogatory he saith: I became acquainted with Meyer Sonneborn about 6 or 7 years. I don't recollect whether or not I knew him when he resided in Texas, and carried on business there. I don't recollect whether he ever failed either in Texas or any other place.

2nd. To the second cross-interrogatory he saith: I think I knew him while he was in Missouri. I don't know whether he ever broke.

177 3rd. To the third cross-interrogatory he saith: I don't remember whether I knew him while he was a member of the firm of E. Leipziger & Co., of New York City.

4th. To the fourth interrogatory he saith: I knew Sonneborn very well when he did business in Mansfield, Ohio, and sold him goods. I don't know how long he remained at Mansfield, Ohio, or how long he carried on business there. I don't know that he broke in business there, never heard of it.

5. To the fifth interrogatory he saith: I don't know when he left Mansfield; I think when he left Mansfield he went to Eufaula, Alabama.

6th. To the sixth interrogatory he saith: I sold him (Meyer Sonneborn) the first bill of goods on credit in New York. He was doing business when I sold him first bill in Mansfield, Ohio. I don't recollect the amount of the bill; it is so long ago—the credit was four months; I could not tell the number of times I sold him goods, as it would take a long time to look it up; it went so long a period. I don't know the amount of each bill I sold him. I will have to see my books.

178 All the bills of goods he bought of me he paid. I have not refused, as he did not apply to me, for credit after he was seized by A. T. Stewart & Co.

7th. To the seventh interrogatory he saith: I am not related to Meyer Sonneborn either by blood or marriage. My religious faith is Jewish. I am an Israelite.

LOUIS WOLLSTEIN.

I, the commissioner in said commission named, do hereby certify that the evidence of the witness, Louis Wollstein, was taken down under oath, and subscribed by him in my presence, on the 6th day of May, 1875, at my office, No. 320 Broadway, in the city of New York, county of New York, and State of New York; and that I have personal knowledge of said witness, and I am not counsel in the cause, or of any kin to

any of the parties to the cause, or in any manner interested in the result thereof.

Witness my hand and seal.

[SEAL.] I. ALBERT ENGLEHART,
Commissioner.

179 *Deposition of Lewis Young.*

Deposition of Lewis Young, witness, sworn and examined under oath, and by virtue of a commission issued out of the circuit court of the United States for the middle district of Alabama, in a certain cause therein depending between Meyer Sonneborn as plaintiff and A. T. Stewart & Co. as defendants.

LEWIS YOUNG, of No. 253 West 36th street, in the city of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

1st. To the first interrogatory he saith: I am a wholesale hat & cap dealer at No. 18 Walker street, in the city of New York, and have been engaged in such business for the last eight years.

2nd. To the second interrogatory he saith: I know the plaintiff in this suit, Meyer Sonneborn, and was engaged in the general merchandise business up to August, 1873.

3rd. To the third interrogatory he saith: I know the credit & standing of said Sonneborn up to August, 1873, & since. His credit & standing was very good up to August, 1873, and since that time it has been destroyed. He could have obtained credit from me & our house to any amount he could use in his business. I never limited him in buy-

180 ing of me. When Meyer Sonneborn's stock of goods was seized and he was put into bankruptcy by Stewart & Co., his credit was lost; and that is all I know that happened about August, 1873; I mean the event of his seizure at that time by Stewart & Co. was destructive to him, as far as purchasing goods was concerned, & his credit was entirely impaired.

4th. To the fourth interrogatory he saith: I do know that A. T. Stewart & Co. seized Sonneborn's stock of goods in August, 1873. The seizure had a very disastrous effect on said Sonneborn as a merchant, & entirely destroyed his credit and standing as a merchant.

5th. To the fifth interrogatory he saith: He has applied to me for credit since August, 1873, and I was obliged to refuse him credit, since he had been seized by Stewart & Co. & his business broken up, & his means to carry on business exhausted.

6th. To the sixth interrogatory he saith: I was, & am, a very large dealer in hats & caps, and I could sell him any amount he would reasonably require for his business before his seizure by Stewart & Co.; I never limited him; I would sell him what he wanted in business. His credit & standing, prior to the said seizure, was very good in New York, and I think he could easily obtain all the goods he wanted on credit; and the seizure entirely destroyed his credit & standing, as well as the proceedings in bankruptcy.

181 1st. To the first cross-interrogatory he saith: I first became acquainted with Meyer Sonneborn in 1871, in New York City. I did not know him when he resided in Texas. I don't know whether or not he failed there.

2nd. To the second cross-interrogatory he saith: I did not know him when he resided in Missouri & did business there, if he ever did any business there. I don't know whether he broke there or not.

3rd. To the third cross-interrogatory he saith: I did not know him when he was a member of the firm of E. Leipziger & Co., in New York City.

4th. To the fourth cross-interrogatory he saith: I did not know Sonneborn when he did business in Mansfield, Ohio. I don't know how long he remained in Mansfield, Ohio. I don't know that he ever broke there.

5th. To the fifth cross-interrogatory he saith: After he left Mansfield he went to Eufaula, Alabama. I think he went to Eufaula, Alabama, in either 1870 or 1871. However, I don't remember; it may have been earlier than that.

6th. To the sixth cross-interrogatory he saith: In New York City I sold him the first bill of goods on credit. He was doing business, then, in Eufaula, Alabama. I don't recollect the amount of the bill. I gave him 4 months' credit. I can't tell the different times I sold him without referring to my books: nor the amount of each bill, for the same
182 reason. The time of the credit was four months, & he always paid at maturity. I only refused him credit after the seizure by Stewart & Co. I think he applied for credit but once after the bankruptcy proceedings, and I then told him I could not sell him goods, as he had no business & had been seized and put into bankruptcy by Stewart & Co.

7th. To the seventh cross-interrogatory he saith: I am in no way related to him, either by blood or marriage.

8th. To the eighth cross interrogatory he saith: My religious faith is Jewish; I am a Hebrew.

LEWIS YOUNG.

I, the commissioner in said commission named, do hereby certify that the evidence of the witness Lewis Young was taken down under oath, and subscribed by him in my presence, on the 6th day of May, 1875, at my office, No. 320 Broadway, in the city of New York, county of New York, and State of New York, and that I have personal knowledge of said witness, and I am not counsel in the cause, or of any kin to any of the parties to the cause, or in any manner interested in the result theref.

Witness my hand & seal.

[SEAL.] I. ALBERT ENGLEHART,
Commissioner.

I certify that I issued & tried to serve subpœnas on Edward Dittman and Samuel Lilienthal, two witnesses named in said commission,
183 but all I could learn at their respective places of business was that they are absent from the city & county of New York.

[SEAL.] I. ALBERT ENGLEHART,
Commissioner.

Charges for taking depositions, and expenses, $219.85.

I. ALBERT ENGLEHART,
Commissioner.

Published by order court May 24th, A. D. 1875.

J. W. DIMMICK, *Clerk.*

184 Suit brought in the circuit court of Barbour County, Alabama, and transferred on petition and application of defendants to the United States circuit court at Montgomery, Alabama.

MEYER SONNEBORN
vs.
A. T. STEWART & CO.

Interrogatories to be propounded to and answered by the following-named persons, who are residents of the city of Baltimore, State of Maryland, and who are material witnesses for the plaintiff in the above-named suit, to wit, Benj. Burgunder, David Ambach, and Mike Ambach, of No. 5 Hanover street; M. Friedman, 241 West Pratt street; M. Heineman, and S. Heineman, 276 W. Pratt street; A. G. Hutzler, Charles G. Hutzler, and David Hutzler, 12 Hanover street.

1. 1st interrogatory. What is your business or occupation, and how long have you been engaged therein?

2. Interrogatory 2nd. Do you know the plaintiff in this suit, Meyer Sonneborn; and if you answer that you know him, please answer in what business or occupation he was engaged up to August, 1873.

3. Interrogatory 3rd. Do you know the credit and standing as a merchant of said Sonneborn up to August, 1873, and since that time? If you do, please tell what it was up to August, 1873, and what it
185 has been since. For what amount could he have obtained credit with you and your business houses up to August, 1873. Did anything happen to said Sonneborn about that time which impaired his credit? If so, what was it?

4. Interrogatory 4th. Do you know anything of defendants, A. T. Stewart & Co., seizing said Sonneborn's stock of goods in August, 1873, and what effect said seizure had upon the credit and standing of said Sonneborn as a merchant? If you do, please tell all you know about it.

5. Interrogatory 5th. Has plaintiff Sonneborn applied to you, or any one of you, or to your business houses for credit since August, 1873; and if he did, did you sell him or refuse to sell him? If you refused, why did you refuse. Tell all about it.

6. Interrogatory sixth. What were your means of selling plaintiff Sonneborn a stock of goods on a credit, and to what extent was his credit good with you prior to your hearing of the proceedings by the defendants against him in the bankrupt court at Montgomery, Alabama? Tell all within your knowledge as to the credit and standing of said Sonneborn as a merchant in the city of Baltimore, and about his ability to procure goods & merchandise on a credit, and how that character and standing & credit was affected, if at all, by the proceedings against him in bankruptcy.

186 S. H. DENT &
J. L. PUGH,
Att'ys for Pl'ff.

We suggest the name of W. W. Latimer, S. W. corner of S't Paul & La Fayette streets, Baltimore, M'd, as a suitable person as commissioner to take and certify the answers of the witnesses in this case.

S. H. DENT &
J. L. PUGH,
Att'ys for Pl'ff.

We accept service of the within interrogatories, & waive copy and

affidavit of residence and materiality of witnesses and consent that commission issue.

April 12th, 1875.

SHORTER & BROTHER,
Att'ys for Def'ts.

Cross-interrogatories.

1st. When did you first become acquainted with the plaintiff, Meyer Sonneborn? Did you know him when he resided in Texas & carried on a mercantile business there? How long did he do business there before he failed?

2nd. Did you know him when he resided in Missouri & did business in that State? How long did he carry on business there before he broke?

187 3rd. Did you know him when he was a member of the firm of E. Leipziger & Co. in New York City? If yea, when was that? How long did he continue in that firm before the firm became insolvent?

4th. Did you know him when he did business in Mansfield, Ohio? How long did he remain in Mansfield, & carry on his business there before he broke?

5. Where did he go to after leaving Mansfield? When did he locate in Eufaula, Alabama?

6. When did you sell him the first bill of goods on a credit? Where was Sonneborn then living? What was the amount of the bill & on what time did you sell to him; state all the different times you ever sold him goods on a credit—the amounts of each bill sold, the time of the credits, & whether all of said accounts were paid at their maturity; how often & at what times have you refused him credit?

7th. Are you in any way related by blood or marriage to the said plaintiff? If yea, state in what manner. What is your religious faith, if you have any? Are you a Jew, Gentile, Protestant, or Catholic?

SHORTER & BROTHER,
Att'ys for Defendants.

188 UNITED STATES OF AMERICA:

Circuit court of the United States for the middle district of Alabama.

To W. W. Latimer or either of you:

Know ye, that we, having full faith in your prudence and competency, have appointed you commissioners, and by these presents do authorize you, or any one or more of you, at such time and place as you may appoint, to call before you and examine Benj. Burgunder, David Ambach, and Mike Ambach, of No. 5 Hanover street; M. Friedman, 241 W. Pratt street; M. Heineman and S. Heineman, 276 W. Pratt street; A. G. Hutzler, Cha's G. Hutzler, and David Hutzler, 12 Hanover street, all of Baltimore, M'd, as witnesses in behalf of plaintiff, in a case pending in the circuit court of the United States for the middle district of Alabama, at Montgomery, wherein Meyer Sonneborn is plaintiff, and A. T. Stewart & Co. are defendants, on oath to be by you administered, upon interrogatories and x-interrogatories annexed to this commission; to take and certify the deposition of the witness, and return the same to our said circuit court to be holden on the first Monday in May next, under your hands and seals.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this first Monday of November, A. D. one thousand eight hundred and seventy-four.

Issued the 13th day of April, 1875.

[SEAL.] J. W. DIMMICK,
Clerk U. S. Circuit Court, Middle Dist. of Ala.

189 The execution of this commission is shown in the schedule hereunto annexed.

W. W. LATIMER,
Commissioner.

In the circuit court of the United States for the middle district of Alabama.

MEYER SONNEBORN
vs.
A. T. STEWART & CO.

STATE OF MARYLAND,
City of Baltimore, set.:

Deposition of Benj. Burgunder, David Ambach, M. Friedman, Mike Ambach, Abraham G. Hutzler, Charles G. Hutzler, David Hutzler, Samuel Heineman, and Marcus Heineman, witnesses, sworn and examined under and by virtue of a commission issued out of the circuit court of the United States for the middle district of Alabama, in a certain cause therein depending between Meyer Sonneborn, plaintiff, and A. T. Stewart & Co., defendants.

Deposition of Benj. Burgunder.

BENJ. BURGUNDER, of the city of Baltimore and State of Maryland, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I was engaged in the whole-
190 sale clothing and piece-goods business up to the first day of January last; I was engaged in the wholesale business previous thereto for ten or fifteen years. I was a member of the firm of Burgunder, Ambach & Co., and of Burgunder & Ambach.

To the second interrogatory he saith: I do know the plaintiff. I have known him for about twenty years. He was engaged in the clothing and dry-goods business up to August, 1873.

To the third interrogatory he saith: His credit and standing as a merchant up to August, 1873, was good. Since that time I would not have sold him anything, because his store was attached, and he had nothing. Up to August, 1873, my firm would have given him credit to the amount of five thousand dollars; his store was attached about that time, and he was broken up, and his credit was gone.

To the fourth interrogatory he saith: I heard that A. T. Stewart & Co. seized Sonneborn's stock of goods about that time. Nobody would give Sonneborn any credit after that. We would not have sold Sonneborn any goods on credit after that; I know that it injured his credit with other houses in Baltimore, because he had no more property.

191 To the fifth interrogatory he saith: He did apply to me after that time to sell him goods on credit. I refused to sell him for the

reason that I did not believe he had anything—no means on account of his store being shut up in Eufaula, Alabama.

To the sixth interrogatory he saith: We did a large wholesale and piece-goods business. We could have sold him to the amount of $20,000. We had customers to whom we sold to the amount of $15,000 or $20,000. We would have sold him on credit to the amount of $5,000, had he wished it; his credit and standing as a merchant in the city of Baltiwas very good. He could have procured goods on credit in this city without any trouble. After the proceedings against him in bankruptcy his credit was gone.

Cross-examined:

To the first cross-interrogatory he saith: I first became acquainted with him about twenty years ago. I did know him when he was in Texas and doing business there. I never heard of his failing in Texas. He owed me money for goods sold him while he was doing business in Texas; the war came on and I heard nothing of him. After the war he came on to Baltimore and paid me this debt.

To the second cross-interrogatory he saith: I knew him when he resided in Missouri, and did business there. I didn't sell him any
192 goods that I remember while he was doing business in that State, but I never heard of his failing there.

To the third cross-interrogatory he saith: I knew him when he was a member of the firm of E. Leipseiger & Co. in New York. It was about 1865 or 1866. I heard that Leipseiger failed about 1866 or 1867, but I do not know of my own knowledge that Sonneborn was doing business with Leipseiger when he failed or became insolvent.

To the fourth cross-interrogatory he saith: I knew him when he did business in Mansfield, Ohio: I think he was there about two years. I never heard of his breaking or failing there.

To the fifth cross-interrogatory he saith: I believe he went to Eufaula, Alabama; this was in 1869, to the best of my recollection.

To the sixth cross-interrogatory he saith: The first bill I sold him on a credit was about twenty years ago; he was living at that time in Clarksburg, then Virginia, now West Virginia. I sold him the first season about twenty-five hundred dollars' worth. It was on a running credit. He paid me as fast as he got money. I cannot state from memory all the different times I have sold him goods on a credit, nor
193 the amounts of each bill sold; the credit was the usual credit given to other customers at the time the goods were sold. All his bills were paid at maturity, except during the war, when we could have no communication. I never refused him credit until after August, 1873.

To the seventh cross interrogatory he saith: I am not related to him in any way. I am a Jew, and in taking the oath I was sworn upon the five books of Moses.

BENJ. BURGUNDER.

Sworn to and subscribed before me this 26th day of April, A. D. 1875.

W. W. LATIMER,
Commissioner.

Deposition of D. Ambach.

DAVID AMBACH, of the city of Baltimore, and State of Maryland, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I am a wholesale clothier and job-

ber in goods for men's wear, in the city of Baltimore. I am now a member of the firm of Ambach, Burgunder & Co. I have been engaged in the wholesale clothing business in Baltimore for the last ten years.

194 To the second interrogatory he saith: I do know the plaintiff. I have known him for about nine years. Since I have known him up to August, 1873, he was engaged in the dry goods and clothing business.

To the third interrogatory he saith: Up to August, 1873, his credit has been good. Since that time we would not have sold him, on account of the seizure of his stock of goods at Eufaula, Alabama. Our concern would have gladly sold him $5,000 on credit previous to August, 1873. We were informed that his stock of goods had been seized in Eufaula, Alabama. We would not sell him then.

To the fourth interrogatory he saith: We heard at the time or a short time after that A. T. Stewart & Co. had seized Sonneborn's stock of goods in Eufaula. It had just this effect, that we would not sell him on credit. And I know it had the same effect to impair his credit with other houses in Baltimore; one particularly, M'r M. Friedman, on Pratt street.

195 To the fifth interrogatory he saith: After the seizure of his stock of goods in Eufaula he applied to us for a credit; we refused on account of the embarrassed condition he was in at the time; this embarrassed condition of Sonneborn was caused by the seizure of the stock of goods belonging to him at Eufaula.

To the sixth interrogatory he saith: We could have sold him $100,000 worth of goods. We did a large wholesale business. We would have cheerfully given him a line of $5,000 credit previous to hearing of these proceedings. I should say that M'r Sonneborn could have got goods on credit from most any one who knew him in the city of Baltimore. His credit and standing was injured by the proceedings against him in bankruptcy. We would not have sold him on credit after that.

Cross examined:

To the first cross-interrogatory he saith: I saw M'r Sonneborn in our store several times in 1865 or 1866; about a year or two after this I made his personal acquaintance. I did not know him when he was doing business in Texas; I never knew that he failed there.

To the second cross-interrogatory he saith: I did not know him when he lived in Missouri, & never heard of his failing there.

To the third cross-interrogatory he saith: I did not know him.

To the fourth cross-interrogatory he saith: I did know him when he did business in Mansfield, Ohio. I do not know how long he remained there. I never heard of his failing there.

196 To the fifth cross-interrogatory he saith: I am under the impression that he moved from Mansfield, Ohio, to Eufaula, Alabama, some time in 1869.

To the sixth cross-interrogatory he saith: The first bill I sold him on credit was when he was living in Mansfield, Ohio, and was in 1867 or 1868. I cannot state the amount of the bill; the credit on which the goods were sold was four months. I cannot state all the different times. I know I sold him in Mansfield several bills, and several bills in Eufaula, all on the same terms, four months. I cannot state the amount of each bill. They varied from $300.00 to $1,000.00—each bill, and that it was not more was his fault. They were all paid as they became due. We have refused him credit but once, and that was after he got into this difficulty.

To the seventh cross-interrogatory he saith: I am not related to him in any shape or form. I am an Israelite, and took the oath before given' my deposition on the five books of Moses.

DAVID AMBACH.

Sworn to and subscribed before me this 26th day of April, A. D. 1875.

W. W. LATIMER,
Commissioner.

197 *Deposition of M. Friedman.*

M. FRIEDMAN, of the city of Baltimore, and State of Maryland, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I am in the wholesale clothing business in the city of Baltimore since 1857.

To the second interrogatory he saith: I do know him very well. He was engaged in the clothing, dry goods, and fancy goods business up to August, 1873.

To the third interrogatory he saith: So much as I know his credit was very good up to August, 1873. Since that time he had no credit in my house. He had in my house before August, 1873, an unlimited credit. I found out that M'r Sonneborn's store was shut up by A. T. Stewart & Co., of New York, who attached his stock of goods.

To the fourth interrogatory he saith: I heard that M'r Sonneborn's stock of goods had been seized by Messrs. A. T. Stewart & Co. in some time in August, 1873. It had so much effect upon me that I would not sell him anything upon credit.

198 To the fifth interrogatory he saith: Sonneborn was here after he was broken up, and did not exactly apply to me for credit, but said he wanted to go into business again; but I gave him to understand that I would not give credit to any man who was engaged in law suits with such a house as A. T. Stewart & Co. I would not give my goods to fight lawsuits with such a rich house as A. T. Stewart & Co.

To the sixth interrogatory he saith: I have customers who buy of me $10,000 or $12,000 a year. Sonneborn had unlimited credit with me previous to his troubles in Eufaula, in August, 1873. I considered him so good that he bought in new houses in Baltimore and gave reference to me, and in answer I offered my endorsement on all he bought from these new houses. His credit was affected very bad with me after the proceedings against him in bankruptcy.

Cross-examined:

To the first cross interrogatory he saith: I became acquainted with him, if I am not mistaken, in the fall of 1855. I knew him when he did business in Texas. I never heard of his failing there.

199 To the second cross-interrogatory he saith: I knew him when he resided in Missouri, and did business there. I never knew of his breaking in that State.

To the third cross-interrogatory he saith: I did know him when he was a member of that firm in New York City. If I am not mistaken it was between 1865 and 1867. I do not know when that firm became insolvent, if they did become insolvent. I do not know whether or not M'r Sonneborn was in that firm when they became insolvent.

To the fourth cross-interrogatory he saith: I did know him when he

did business in Mansfield, Ohio. I do not know how long he did business there. I never heard of his breaking there.

To the fifth cross-interrogatory he saith: I believe he went from Mansfield to Eufaula, Alabama. I know I sold him goods in Eufaula in 1870 and 1871.

To the sixth cross-interrogatory he saith: I believe, if I am not mistaken, the first bill of goods I sold him was when he was doing business at Freeport, Illinois, in 1855. I was then in the retail clothing
200 business. I cannot remember the amount of the bill; the credit was the regular credit of the time, either four or six months. I sold him in Illinois, in Missouri, in Mansfield, Ohio; here I sold him piece goods, and I sold him in Eufaula twice or three times. I cannot state the amount of each bill. The credits were the regular credits of the times of sale, either four or six months. All the said accounts were paid at maturity. I never refused him credit till 1873, after his goods were seized in Eufaula. Then it was done in the manner and for the reasons given in my answer to the fifth direct interrogatory.

To the seventh cross-interrogatory he saith: One of his brothers married my wife's sister, and another of his married my sister. There is no relation by blood. I am an Israelite, and before giving my deposition I was sworn upon the five books of Moses.

M. FRIEDMAN.

Sworn to and subscribed before me this 26th day of April, A. D. 1875

W. W. LATIMER,
Commissioner.

201 *Deposition of Mike Ambach.*

MIKE AMBACH, of the city of Baltimore and State of Maryland, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I am a wholesale clothing merchant; one of the firm of Ambach, Burgunder & Co., in the city of Baltimore. The firm was formerly Burgunder and Ambach. I have been engaged in the wholesale clothing business since 1870.

To the second interrogatory he saith: I do know the plaintiff. I have known him for the last eight or nine years. He was engaged in a general merchandize business up to August, 1873.

To the third interrogatory he saith: I do know his credit and standing. Up to August, 1873, we would have sold M'r Sonneborn goods to the amount of $5,000 at any time, and since that time we would not sell him any goods whatever on credit. We heard of his being closed up in Eufaula, Alabama, a few days after it happened; that his stock had been seized, and that he had been broken up. This impaired his credit with us, and was the reason why we would not extend further credit to him.

202 To the fourth interrogatory he saith: I knew that his stock of goods had been seized, but I did not know at the time who did it. I afterwards learned A. T. Stewart & Co., of New York, had done so. It had a very bad effect with us, and we refused him credit after it happened.

To the fifth interrogatory he saith: Since August, 1873, he has applied to my house for credit on goods; we refused very plainly to sell him on credit. We refused him credit on the grounds that I have just stated in my answer to third question.

To the sixth interrogatory he saith: We kept a large stock of piece goods, and clothing, such as he required for his trade, and had capital sufficient to sell on credit. His credit with us was good to the extent of $5,000 up to that time. His credit and standing, I think, was sufficiently good, in the city of Baltimore, to have enabled him to have bought all the goods he wanted on credit. We tried very often to sell him more goods, but he would not buy; thought he had enough. After these proceedings against him, his credit was injured. And, as I have said before, we refused to sell him on credit.

203 Cross-examined:

To the first cross-interrogatory he saith: I became acquainted with him, to the best of my knowledge, in 1867. I did not know him when he resided in Texas, and did business there. I never knew of his having failed in Texas.

To the second cross-interrogatory he saith: I did not know him when he resided in Missouri, nor never heard of his having failed there.

To the third cross-interrogatory he saith: I did not know him then, nor do I know anything about that firm.

To the fourth cross-interrogatory he saith: I knew him in Mansfield, Ohio. I never heard of his having failed there, or at any place else.

To the fifth cross-interrogatory he saith: I think he went to Eufaula, Alabama, from Mansfield. I do not remember exactly when he located in Eufaula.

To the sixth cross-interrogatory he saith: The first bill, to my knowledge, was in 1870; that was the year I went into the firm. He
204 was then living in Eufaula, Alabama. I do not remember the amount of the bill. We sold him on four months. I cannot state all the different times that we sold him goods on credit, and I cannot give the amounts of each bill. The bills must all have been paid by Mr Sonneborn at maturity, or else he would have had no credit with us; the credit was four months. We have only refused him credit once, and that was after our first knowing that his stock had been seized in Eufaula.

To the seventh cross-interrogatory he saith: I am not related by marriage or blood to the plaintiff. I am a Jew, and was sworn on the Five Books of Moses before giving this deposition.

MIKE AMBACH.

Sworn to and subscribed before me this 26th day of April, A. D. 1875.

W. W. LATIMER,
Commissioner.

Deposition of A. G. Hultzer.

ABRAHAM G. HUTZLER, of the city of Baltimore and State of Maryland, being duly sworn to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

205 To the first interrogatory he saith: I am a merchant selling notions and white goods, wholesale. I am a partner of Hutzler Brothers, doing a retail business at No. 67 North Howard street, in the city of Baltimore. I am also a partner in the firm of Hutzler Brothers, exclusively wholesale, at No. 12 Hanover street, in this city. I have been in the business for the last seventeen years.

To the second interrogatory he saith: I do know him; have known

him five or six years; to my knowledge he has been engaged in a general dry-goods business up to the time inquired of.

To the third interrogatory he saith: Up to August, 1873, his credit and standing was good, since then it has not been good, owing to the difficulties he had with A. T. Stewart & Co. We would have been glad to have sold him up to August, 1873, from $1,000.00 to $1,500.00, on credit. Yes; A. T. Stewart & Co. closed him up, and seized his stock of goods.

To the fourth interrogatory he saith: I heard that the seizure by A. T. Stewart & Co. had taken place at about that time. It injured Sonneborn's credit, as a merchant, in the city of Baltimore.

206 To the fifth interrogatory he saith: He did not apply to me personally, nor do I know that he did apply to any of the members of my firm for credit since August, 1873. Had he applied we would have refused to have given him credit under the circumstances.

To the sixth interrogatory he saith: We are in a condition to sell a customer a bill amounting to $20,000 on credit. Sonneborn's credit with us was from $1,000 to $1,500. previous to hearing of the proceedings against him in bankruptcy at Eufaula, Alabama. His credit and standing as a merchant in the city of Baltimore was good. He had no difficulty in getting all the goods he required on credit in this city prior to the proceedings in bankruptcy.

Cross-examined:

To the first cross-interrogatory he saith: I first became acquainted with him about five or six years ago. I did not know him when he resided in Texas. I never heard that he failed in Texas, or anywhere else.

207 To the second cross-interrogatory he saith: I did not know him when he resided in Missouri. I never heard of his having broke in that State.

To third cross interrogatory he saith: I have no knowledge of any of the matters inquired of in this question.

To the fourth cross-interrogatory he saith: Did not know him, and never heard of his having failed in Mansfield, Ohio.

To the fifth cross-interrogatory he saith: I have no knowledge of where he went after leaving Mansfield, Ohio, nor do I know the precise date that he located in Eufaula, Alabama. We first sold him goods in the spring of 1870. He was then doing business at Eufaula, Alabama.

To the sixth cross-interrogatory he saith: We sold him the first bill on credit in March, 1870. He was then living in Eufaula. The amount of the bill was $158, on four months' credit. We sold him twice a year since then, and up to April, 1873, bills to the amount of $300 to $400, each bill; the credits were always four months; all were paid at their maturity except the last bill, on which a balance remains unpaid. We

208 never refused him credit, but had he applied immediately after the bankruptcy proceedings, we would have refused him credit.

To the seventh cross-interrogatory he saith: My brother married his niece; there are no blood ties. I am a Jew, and previous to giving this deposition I was sworn upon the Five Books of Moses.

A. G. HUTZLER.

Sworn to and subscribed before me this 26th day of April, A. D. 1875.

W. W. LATIMER,
Commissioner.

Deposition of C. G. Hultzer.

CHARLES G. HUTZLER, of the city of Baltimore and State of Maryland, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I am engaged in the wholesale notion and white-goods business, at No. 12 Hanover street, in the city of Baltimore. I have been engaged in this business eight years.

To the second interrogatory he saith: I do know him; have
209 known him five or six years. He was in the retail dry-goods business, &c., a general store, up to August, 1873.

To the third interrogatory he saith: Sonneborn's credit and standing as a merchant was undoubtedly good up to August, 1873. And after that time his credit was bad, by his place being closed up. His credit was not limited with us. We would gladly have sold him $1,200 to $1,500 worth of goods on credit at any time prior to August, 1873. His being closed up by A. T. Stewart & Co., and his stock of goods attached, impaired his credit.

To the fourth interrogatory he saith: I heard that A. T. Stewart & Co. had seized his stock of goods in August, 1873. It had a very ruinous effect upon the credit and standing of said Sonneborn as a merchant.

To the fifth interrogatory he saith: He has not applied for credit to my firm since August, 1873, to my knowledge.

To the sixth interrogatory he saith: If we had a customer who wanted to buy $20,000 to $25,000 we could sell it to him on credit. Prior to hearing of these proceedings, his credit was good with us to the
210 amount of $1,200 to $1,500. I think he could have got all the goods on credit he desired to buy without difficulty. The proceedings in bankruptcy against him impaired his credit, and had a tendency to ruin him.

Cross-examined:

To the first cross-interrogatory he saith: I first became acquainted with him between five or six years ago. I did not know him when he resided in Texas, and have no knowledge of his having failed there.

To the second cross-interrogatory he saith: I have no knowledge of his living in Missouri, or of his having failed there.

To the third cross-interrogatory he saith: I know nothing of it.

To the fourth cross-interrogatory he saith: I have no knowledge of his having lived in Mansfield, Ohio, or to his having failed there.

To the fifth cross-interrogatory he saith: I have no knowledge where he went to. I think in the year 1869 he located in Eufaula, Alabama.

211 To the sixth cross-interrogatory he saith: We sold him the first bill of goods on credit in March, 1870. He was then living in Eufaula. The bill amounted to $158; the credit was four months. We sold him, in the spring and fall of the years 1870, '71, '72, and the spring of 1873, bills ranging from $300 to $400, on four months' credit. All of the bills were paid at maturity, with the exception of the last bill, and on which he paid a part. We have never refused him credit; but had he applied immediately after the bankruptcy proceedings, we would have refused him credit.

To the seventh cross-interrogatory he saith: I am by marriage related to Sonneborn. I married his niece. I am a Jew, and, before giving my deposition, was sworn on the Five Books of Moses.

CHARLES G. HUTZLER.

Sworn to and subscribed before me this 26th day of April, A. D. 1875.

W. W. LATIMER,
Commissioner.

212 *Deposition of David Hultzer.*

DAVID HUTZLER, of the city of Baltimore and State of Maryland, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I am a merchant in the city of Baltimore, having charge of the retail store of Hutzler Brothers. I have been engaged in the business seventeen years.

To the second interrogatory he saith: I do know the plaintiff; have known him several years. I do not know what business he was engaged in; but I do know that he bought goods of our wholesale establishment on Hanover street.

To the third interrogatory he saith: With us he could buy the goods he wanted on credit. I am unable to give information on the latter part of the question, as I am exclusively in the retail branch of our business.

To the fourth interrogatory he saith: I have no knowledge of the matters inquired about in this question.

213 To the fifth interrogatory he saith: He never applied to the retail branch for credit. If he applied to the wholesale branch, I am not aware of it.

To the sixth interrogatory he saith: Our means were ample for selling him a stock of goods on credit; and his credit was good for whatever amount he bought. His credit and standing as a merchant in the city of Baltimore was good. From the best of my information his ability to procure goods on a credit was good in this city.

Cross-examined:

To the first cross-interrogatory he saith: I first became acquainted with him several years ago. I never knew that he resided in Texas; never heard of his failing there.

To the second cross-interrogatory he saith: I never knew that he resided in Missouri. I never heard of his breaking there.

To the third cross-interrogatory he saith: I never knew he was a member of that firm. I never knew there was such a firm.

To the fourth cross interrogatory he saith: I never knew that
214 he did business in Mansfield, Ohio. I never heard that he broke there.

To the fifth cross-interrogatory he saith: I do not know.

To the sixth cross-interrogatory he saith: I know nothing of the details inquired of.

To the seventh cross-interrogatory he saith: I am related in no way to the plaintiff. I am an Israelite, and was sworn on the Five Books of Moses before giving this deposition.

DAVID HUTZLER.

Sworn to and subscribed before me this 26th day of April, A. D. 1875.

W. W. LATIMER,
Commissioner.

Deposition of Samuel Heineman.

SAMUEL HEINEMAN, of the city of Baltimore and State of Maryland, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I am a wholesale dealer in and a

manufacturer of segars in the city of Baltimore for the last six years.

215 To the second interrogatory he saith: I do know him; have known him between four and five years. He was engaged in a general merchandise business.

To the third interrogatory he saith: His standing and credit up to that time was first-rate, to my knowledge; and I was always under the impression that he was making money down at Eufaula. His credit has been killed since that time. He could have had credit with my house up to that time to the extent of $2,000, if I knew that he could have made use of my line of goods to that extent. The seizure of his goods by A. T. Stewart & Co. greatly impaired his credit.

To the fourth interrogatory he saith: I recollect Mr. Meyer Sonneborn coming to my place and personally informing me of the seizure of his stock of goods by A. T. Stewart & Co., about the latter part of August, 1873. It had the effect of ruining his credit as a merchant. I knew that the stock of goods seized by A. T. Stewart & Co. was all the said Sonneborn was worth.

To the fifth interrogatory he saith: I do not recollect whether he applied for credit or not since that time; if he did, I think I would have refused him.

216 To the sixth interrogatory he saith: We have sold parties on credit as high as $4,000. We would have sold him a bill of goods amounting to $2,000, providing he could make use of our line of goods, on credit, prior to hearing of these proceedings in bankruptcy. To my knowledge, the credit and standing of said Sonneborn as a merchant in this city was very good. He could have bought goods on credit here without any difficulty before the proceedings against him in bankruptcy; that killed his credit here.

Cross-examined:

To the first cross-interrogatory he saith: I first became acquainted with the plaintiff between four and five years ago. I did not know him when he resided in Texas, and do not know that he failed there.

To the second cross-interrogatory he saith: I have no knowledge.

To third cross-interrogatory he saith. I have no knowledge of the matters inquired of.

To the fourth cross-interrogatory he saith: I did not know him when he did business in Mansfield, Ohio. I never heard that he failed there.

To the fifth cross-interrogatory he saith: I have no knowledge.

To the sixth cross-interrogatory he saith: I sold him the first bill on credit about four years ago; he was then living in Eufaula, Alabama. I do not recollect the amount of the bill. It was sold on our regular time. We sold him several bills on credit, but I cannot state
217 the precise times or the amounts of the several bills, or the precise credits, that were given; they were all paid at their maturity. I never refused him credit.

To the seventh cross-interrogatory he saith: I married Mr. Sonneborn's niece; there is no blood connection. I am an Israelite. I have just been sworn on the Five Books of Moses.

SAMUEL HEINEMAN.

Sworn to and subscribed before me this 26th day of April, A. D. 1875.

W. W. LATIMER,
Commissioner.

Deposition of Marcus Heineman.

MARCUS HEINEMAN, of the city of Baltimore and State of Maryland, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I am a segar manufacturer in the wholesale business; have been engaged in it some eight or nine years.

To the second interrogatory he saith: I do know Meyer Sonnborn, the plaintiff; he was engaged in merchandizing.

To the third interrogatory he saith: His credit up to that time was good; so far as I know, with us, it was good. After we heard of the seizure of his stock of goods, his credit was gone. He could have obtained credit with my house up to that time for $2,000. His goods were seized and his business broken up; that impaired his credit, as a matter of course.

To the fourth interrogatory he saith: I heard that his stock of goods had been seized by A. T. Stewart & Co. about that time. The effect was that his credit was gone.

To the fifth interrogatory he saith: I cannot say positively that
218 he did apply for credit after that time; if he had of asked we would have refused him. For the reason that his stock of goods had been seized, and we did not believe he had anything; that all he had was gone.

To the sixth interrogatory he saith: We kept a pretty large stock of goods, and a capital in business that enabled us to sell on credit. Prior to hearing of these proceedings in bankruptcy, his credit with us was good to the extent of $2,000. I think it would have been an easy matter for M'r Sonneborn to have a pretty good credit. It was so affected by these proceedings, that the credit which he had up to that time was lost to him.

Cross-examined:

To the first cross-interrogatory he saith: I first became acquainted with him several years ago; I cannot say how many. I did not know him when he resided in Texas. I never heard that he failed in Texas.

To the second cross-interrogatory he saith: I know nothing about his living in Missouri; never heard that he failed there.

To the third cross-interrogatory he saith: I know nothing about this question.

To the fourth cross-interrogatory he saith: I have no knowledge of him in Mansfield, Ohio. I never heard that he broke there.

219 To the fifth cross-interrogatory he saith: I don't know where he went to after he left Mansfield, and don't know when he located in Eufaula.

To the sixth cross-interrogatory he saith: I cannot recollect when we sold him the first bill on credit. I believe he was living in Eufaula, Alabama, at the time. I cannot state the amount of the bill. I don't recollect the time of credit. I cannot state all the different times we sold him goods on credit. I cannot give the amount of each bill sold him, or the time of the credits. All the debts were paid at maturity. I don't know that he ever applied for credit after August, 1873. We never refused him before that time.

To the seventh cross-interrogatory he saith: M'r Sonneborn is my wife's uncle. I am not related to him by blood. I am an Israelite, and was sworn on the five books of Moses before giving this deposition.

MARCUS HEINEMAN.

Sworn to and subscribed before me this 26th day of April, A. D. 1875.

W. W. LATIMER,
Commissioner.

220 STATE OF MARYLAND,
City of Baltimore, set:

I, William W. Latimer, the commissioner in the said annexed commission named, do hereby certify that the evidence of the witnesses Benjamin Burgunder, David Ambach, M. Friedman, Mike Ambach, Abraham G. Hutzler, Charles G. Hutzler, David Hutzler, Samuel Heineman, and Marcus Heineman, was taken down under oath, and was reduced to writing by my clerk, Murray Hanson, a disinterested person, in my presence, and in the presence of the witnesses respectively, and subscribed by them respectively in my presence, on the 26th day of April, A. D. 1875, at my office, southwest corner of Paul and Fayette streets, in the city of Baltimore, in the State of Maryland, and that I have personal knowledge of said respective witnesses, and that I am not of counsel in the cause, or of any kin to any of the parties to the case, or in any manner interested in the result thereof.

Witness my hand and seal, at Baltimore, this 26th day of April, A. D. 1875.

[SEAL.]

W. W. LATIMER,
Commissioner.

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Costs of taking depositions	$30 00
Attendance of witnesses	9 00
Expressage	75
	$39 75

Paid by plaintiff.

W. W. L., *Commissioner.*

Published by order of court this 24th day of May, A. D. 1875.

J. W. DIMMICK, *Clerk.*

Suit in the U. S. circuit court at Montgomery, Alabama.

MEYER SONNEBORN
vs.
A. T. STEWART & CO.

Deposition of Henry Price.

Interrogatories to be propounded to and answered by Henry Price, a resident of the city of Baltimore, State of Maryland, and a material witness for plaintiff in the above stated case.

1. Interrogatory 1st. Do you know the parties to this suit?

2. Interrogatory 2nd. Where were you in August, 1873, and in
222 whose employ were you at that time, and how long had you been in said employ, and in what business were you engaged?

3. Interrogatory 3rd. If you answer that you were in employ of plaintiff at the time stated, please state whether or not you examined the goods of, and took stock for, plaintiff at any time in the year 1873; if

you did, where was said stock of goods; what was its condition at the time you examined them or took stock; what amount of goods did plaintiff have in his said store, at Eufaula, Alabama, and what was the character of the goods; were said goods in good condition or not, and what were said stock of goods worth? Answer fully.

4. Interrogatory 4th. What about the books, notes, and accounts of plaintiff; what amount did he have on his books; what became of said goods as far as you know; did plaintiff collect his notes and accounts; and, if not, why not? Has he ever collected them, and, if not, why? If you know, answer.

S. H. DENT, & J. L. PUGH,
Att'ys for Pl'ff.

We accept service of the within interrogatories, and waive affidavit of residence, and materiality of witness, and consent that com-
223 mission issue to W. W. Latimer, esq.
April 23, 1875.

SHORTER & BROTHER,
Att'ys for Def'ts.

Cross-interrogatories.

1st. How are you related to Meyer Sonneborn? When were you employed by him as a clerk in Eufaula? Did you know him when he merchandised in Texas, and in Missouri, and in Mansfield, Ohio, & in New York City? Did you have any interest in his business in Eufaula or elsewhere? If you were paid fixed wages, how much did you receive? Did he have any other clerk in Eufaula except you, in the summer of A. D. 1873; if yea, who was it? How much did plaintiff's monthly sales in Eufaula amount to in July & August, A. D. 1873?

2nd. If you answer that you aided in taking the stock of plaintiff's goods in Eufaula, in 1873, tell what month it was & on what day of the month. Who aided you in taking account of his stock; was it taken down in writing; where is the writing? If you have it, append it to your answers. How much was his stock put down at when you took an account of it? How long had the goods been in the storehouse? What was plaintiff's object in taking an account of his stock on hand? How long was this after the adjournment of the Eufaula city court? Did you about that time hear the plaintiff say anything about a
224 judgment that had been rendered against him in said city court, in favor of his brother who lived in New York City; if yea, what did he say about it?

3rd. What time was it that plaintiff's storehouse in Eufaula was closed up by the United States marshal; where was the plaintiff at that time; was he not in Texas at that time or soon thereafter? What did he go there for; did you receive any letters from him written while he was in Texas? If yea, tell where those letters are now. If you have such letters, referring to the removal of his goods or any part thereof from Eufaula to Texas, append them to your answer to this interrogatory; if you received such letter or letters, and cannot now produce them, tell all plaintiff said in them about his removing his goods from Eufaula to Texas? What directions or instructions did he give you about shipping said goods or selling them out privately in Eufaula? Don't you remember that such letters as are herein alluded to were seized
225 in plaintiff's store in Eufaula by the United States marshal when he closed the storehouse; did you not apply to Shorter & Broth-

er for the return to you of such letter or letters, & were they not delivered up to you; what did you do with them; do you not know, or have good reasons to believe, that about the time plaintiff's storehouse was closed in Eufaula that plaintiff was preparing to run away from Eufaula to Texas; had he not rented a storehouse in Texas?

4th. After the storehouse in Eufaula had been closed by the marshal, did not the marshal or Shorter & Brothor return to you the books, notes, and accounts belonging to said plaintiff; was not this done a short time after the seizure of the goods?

SHORTER & BROTHER,
Att'ys for Def'ts.

UNITED STATES OF AMERICA:

Circuit court of the United States for the middle district of Alabama

To W. W. Latimer, or either of you:

Know ye, that we, having full faith in your prudence and com-
226 petency, have appointed you commissioner, and by these presents do authorize you, or any one or more of you, at such time and place as you may appoint, to call before you and examine Henry Price, as witness in behalf of plaintiff, in a case pending in the circuit court of the United States for the middle district of Alabama, at Montgomery, wherein Meyer Sonneborn is plaintiff and A. T. Stewart & Co. are defendants, on oath to be by you administered, upon interrogatories and cross-interrogatories annexed to this commission; to take and certify the deposition of the witness, and return the same to our said circuit court, to be holden on the first Monday in next under your hands and seals.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this first Monday of November, A. D. one thousand eight hundred and seventy-four.

Issued the 23rd day of April, 1875.

[SEAL.] J. W. DIMMICK,
Clerk U. S. Circuit Court, Middle Dist. of Ala.

The execution of this commission is shown in the schedule hereunto annexed.

W. W. LATIMER,
Commissioner.

227 Suit in the U. S. circuit court, at Montgomery, Alabama.

MEYER SONNEBORN
vs.
A. T. STEWART & CO.

STATE OF MARYLAND,
City of Baltimore, set:

Deposition of Henry Price, witness, sworn and examined under and by virtue of a commission issued out of the circuit court of the United States for the middle district of Alabama, in a certain cause therein depending, between Meyer Sonneborn, plaintiff, and A. T. Stewart & Co., defendants.

HENRY PRICE, of the city of Baltimore, in the State of Maryland, be-

ing duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I do know the parties, Meyer Sonneborn, personally and well, have known him for five years past; A. T. Stewart & Co. I know well by reputation.

To the second interrogatory he saith: In August, 1873, I was in the employ of Meyer Sonneborn, the plaintiff in this suit, in Eufaula, Alabama. I had been in his employ about six weeks. The business was a general merchandise business.

228 To the third interrogatory he saith: I did examine the goods, and took account of the stock of goods belonging to Meyer Sonneborn in his storehouse in Eufaula, Alabama, either the latter part of July or the beginning of August, 1873; M'r Sonneborn and another clerk, Marsh King, assisted. The goods at the time were in very good condition; they were all merchantable. The stock consisted of dry goods, some clothing, notions, hats, and some groceries. The whole stock of goods in my estimation was worth at the time about from $12,000 to $15,000. I cannot state the amounts of the goods from memory. I made the list comprising the stock at the time of the taking of the stock, giving the measures, quantities, and pieces.

To the fourth interrogatory he saith: I do not know anything about the books and accounts of the plaintiff, or where they are now. M'r Sonneborn kept his own books. When M'r Sonneborn went to Texas just before his store was closed by A. T. Stewart & Co., I kept a little memorandum book laying in the money-drawer; in this book I entered all the goods that were sold and not paid for cash. This book I left in the drawer. To the best of my recollection all the books, notes, and accounts were in the store at the time it was closed by the marshal. I cannot state the amount on his books. The goods were taken out of Sonneborn's store, and put in Henry Hart's cotton warehouse, in Eufaula. He did not collect his notes and accounts to my knowledge, because in the first place he was not there when the store was closed, and after his return I was employed elsewhere. I do not know if he ever collected them, or why.

Cross-examined:

229 To the first cross interrogatory he saith: I am no relation at all by blood. M'r Sonneborn's brother married my aunt. I was employed by him in Eufaula from the beginning of July to the first of September, 1873. I didn't know him when he merchandized in Texas and in Missouri. I knew him when he was in Mansfield, Ohio. I did not know him when he was merchandizing in New York City. I had no interest in his business in Eufaula or elsewhere. I was a clerk at the wages of $ .00 per month; this was Eufaula—that was the amount of wages fixed upon—but I have never been paid yet, on account of M'r Sonneborn's troubles. He had one other clerk, Marsh King. I cannot remember how much his monthly sales amounted to in July and August, 1873.

To the second cross-interrogatory he saith: The account of the stock was taken either the latter part of July or the beginning of August, 1873. I cannot recollect the date of the month. Marsh King and M'r Sonneborn aided me. It was taken down in writing by me. I cannot say where that writing is now. To my recollection the value of the stock at the time was from $12,000 to $15,000. I do not know how long the goods had been in the storehouse; I had been there but a short time when the stock was taken. He took account of stock because he wanted to change his place of busine s. I do not know at what time the city court did

adjourn. I did not hear him say anything about a judgment in favor of his brother at that time, or at any time. I have no knowledge of it.

To the third cross-interrogatory he saith: I do not know exactly the date, but it was in the month of August, 1873, the middle of the month. The plaintiff had left Eufaula about ten or twelve days before the closing up for Texas. He went to Texas to look out for a new place of business. I did receive letters from him while he was in Texas. I do not know where those letters are now. I have no such letters any more in my possession. M'r Sonneborn wrote me in these letters to try and sell off the stock of goods to the best advantage and as soon as I could.

230 He wrote me that he had selected a location in Texas, and to save freight from Eufaula to Texas, to sell as many of the heavy goods as possible. He did not give me any instructions about shipping the goods; he said he would let me know in time for that. He directed me to publish in the paper the fact of selling out preparatory to removing to Texas, which I did. There were no such letters seized by the United States marshal when he closed the plaintiff's storehouse in Eufaula. I did apply to Shorter & Brother for the return of private property belonging to me then in storehouse of M'r Sonneborn, among which were these letters I had received from M'r Sonneborn in Texas, and which were my private property. They delivered the private property, including these letters, to me. They asked me if I knew the contents of these letters. I told them, yes. They then asked me to let them read them. I did so. After which they returned the letters to me by request of myself. I cannot say what I did with them. He was preparing to remove from Eufaula to Texas. I know that everybody knew it in Eufaula. It had been advertised in the Eufaula city papers. He had rented a store in Texas, so he informed me.

To the fourth cross-interrogatory he saith: They did not return to me the books, notes and accounts of the plaintiff after the store was closed; I have never seen such books, accounts, &c., since the closing of the store by the marshal.

HENRY PRICE,

Sworn to and subscribed before me this 28th day of April, A. D. 1875.

W. W. LATIMER,
Commissioner.

231 STATE OF MARYLAND,
City of Baltimore, set:

I, William W. Latimer, the commissioner in the said annexed commission named, do hereby certify that the evidence of the witness, Henry Price, was taken down under oath, and was reduced to writing by my clerk, Murray Hanson, a disinterested person, in my presence, and in the presence of the witness, and subscribed by him in my presence, on the twenty-eighth day of April, A. D. 1875, at my office, southwest corner of S't Paul and Fayette streets, in the city of Baltimore, in the State of Maryland, and that I have personal knowledge of said witness, and that I am not of counsel in the cause, or of any kin to any of the parties to the cause, or in any manner interested in the result thereof.

Witness my hand and seal at Baltimore, this twenty-eighth day of April, A. D. 1875.

W. W. LATIMER,
Commissioner.

Costs of taking deposition	$6 00
Attendance of witness	1 00
Expressage	25
	7 25

Paid by plaintiff.

W. W. L., *Commissioner.*

Published by order of court, this 24th day of May, A. D. 1875.

J. W. DIMMICK, *Clerk.*

232 *Testimony of Henry C. Semple.*

Plaintiff next introduced as their witness Henry C. Semple, who testified as follows:

That he resided in the city of Montgomery, and was a lawyer by profession; that he had been practicing law many years; that upon the facts stated by the plaintiff's counsel in reference to the bankruptcy proceedings instituted against Meyer Sonneborn by A. T. Stewart & Co., his opinion was that the attorney's fees for defending that suit in behalf of Sonneborn was reasonably worth fifteen hundred dollars; that for prosecuting the present suit of Meyer Sonneborn against A. T. Stewart & Co. in this court for damages one thousand dollars at least would be a reasonable retainer, and the amount of fee proper to be charged in addition thereto would depend upon the amount of the recovery.

On cross-examination, in answer to question of defendants' counsel, "whether as a lawyer his opinion was that the plaintiff would be entitled to recover anything for lawyer's fees in this case, if his counsel mistook his remedy and brought the wrong form of action?" he said his opinion was that he would be entitled to recover the thousand dollars anyhow.

The plaintiff here rested his case.

Transcript, city court, Barbour Co.

The defendants then introduced as evidence in their behalf a transcript from the city court of Eufaula, in Barbour County, Ala-
233 bama, being a copy of the record of a suit and judgment in said court in favor of Jonas Sonneborn against Meyer Sonneborn, rendered on the 12th day of June, 1873, for six thousand nine hundred and forty-four [illegible] dollars, which transcript is in words and figures as follows, to wit:

Caption.

THE STATE OF ALABAMA,
Barbour County:

On the 12th day of May, 1873, Jonas Sonneborn brought his suit by summons and complaint in the city court of Eufaula, in said State and county, which summons and complaint is in words and figures following, to wit:

Summons.

THE STATE OF ALABAMA,
Barbour County:

To any sheriff of the State of Alabama, greeting:

You are hereby commanded to summons Meyer Sonneborn to appear

at the next term of the city court of Eufaula, to be held for said county, at the place of holding the same, then and there to answer the complaint of Jonas Sonneborn.

Witness my hand and seal this the 12th day of May, 1873.

A. T. SPENCE, *Clerk.*

Complaint.

Eufaula city court, June term, 1873.

JONAS SONNEBORN, PLAINTIFF,
vs.
MEYER SONNEBORN, DEFENDANT.

Plaintiff claims of defendant the sum of six thousand eight
234 hundred and seventy-two & [illegible] dollars, due on a foreign judgment which was rendered in favor of plaintiff against defendant, and one B. Dittenhoser (not sued in this action), in the supreme court of the county and city of New York, in the State of New York, on the 1st day of May inst., 1873; and plaintiff alleges that said court is a court of common-law jurisdiction, and a court of record, and had jurisdiction of the persons and subject matter of said suit, and had full power and authority to render said judgment, and that the said judgment is still outstanding against defendant, unreversed, unannulled, and unsatisfied, or any part thereof, and with interest is still due and unpaid.

BUFORD & DENT,
Pl'ff's Att'ys.

Sheriff's return.

Received in office, May 17th, 1873.

I. C. FLOURNOY, *Sheriff,*
Per T. D. PATTERSON, *Dep. Sh'ff.*

Executed by leaving a copy of the within summons and complaint with the defendant, May 17th, 1873.

I. C. FLURNOY, *Sheriff,*
Per T. D. PATTERSON, *Dep. Sh'ff.*

When this case came on to be tried, the plaintiff by his attorneys introduced the following record as evidence of his claim, to wit:

235 *Record from N. York.*

The people of the State of New York, by the grace of God, free and independent, to all to whom these presents shall come or may concern, greeting:

Know ye, that we, having examined the records and files in the office of the clerk of the county of New York, and clerk of the supreme court of said State for said county, do find a certain judgment roll there remaining, in the words and figures following, to wit:

N. Y. supreme court.

JONAS SONNEBORN, PLAINTIFF,
vs.
MEYER SONNEBORN ET AL., DEFENDANTS.

CITY AND COUNTY OF NEW YORK, *ss:*

Robert G. Schmidt, being duly sworn, says that on the 10th day of

April, 1873, at No. 320 Broadway, in the city of New York, he served the annexed summons on Meyer Sonneborn, defendant in this action, by delivering a copy of the same to him, such defendant, personally, and leaving the same with him.

He further says that he knew the person served as aforesaid to be the person mentioned and described in the said summons as the defendant in this action.

ROBERT G. S'MIDT.

Sworn to before me, this the 1st day of April, 1873.

F. H. TAYLOR,
Com'r of Deeds, N. Y. City.

236 Supreme court, New York.

CITY AND COUNTY OF NEW YORK:

JONAS SONNEBORN, PLAINTIFF,
vs.
MEYER SONNEBORN AND B. DITTENHONESER, defendants.

To the defendants and each of them:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, at his office, court house, New York City, and to serve a copy of your answer to the said complaint, on the subscribers, at their office, No. 320 & 322 Broadway, New York City, within twenty days of the service of this summons on you, exclusive after the day of such service, and if you fail to answer the said complaint, within the time aforesaid, the plaintiff in this action will take judgment against you, for the sum of six thousand and seven hundred and ninety-five $\frac{37}{100}$ dollars, with interest from the 10th day of January, one thousand eight hundred and sixty-eight, besides the cost of this action.

Dated New York, April 9th, 1873.

RUNKLE & ENGLEHART,
Pl'ff's Att'ys.

237 Supreme court, New York.

JONAS SONNEBORN
vs.
MEYER SONNEBORN AND B. DITTENHONESER.

The plaintiff complains against the defendants, and shows to the court, that at the time hereinafter mentioned the defendants were co-partners in trade, doing business at Mansfield, in the State of Ohio, under the firm name of M. Sonneborn & Co.

Cause of action 1st.

For first cause of action:

That at the city of New York, on the 5th day of August, 1868, the defendants made, endorsed and delivered their certain promissory note, of which the following is a copy:

$960.12.] NEW YORK, *May 5th*, 1868.

Forty months after date, we promise to pay to the order of ourselves nine hundred and sixty $\frac{12}{100}$ dollars, at value received, with current rate of exchange on New York.

Signed and endorsed:

M. SONNEBORN & CO.

That no part thereof has been paid, and there is now due and owing thereon, from defendants to plaintiff, the sum of nine hundred and sixty $\frac{12}{100}$ dollars, with interest from the 8th day of September, 1871.

Cause of action 2nd.

For a second cause of action:

That at said city of New York, on the 5th day of August, 1868,
238 the defendants made, endorsed and delivered to the plaintiff their certain promissory note, of which the following is a copy:

$1,000.00.] NEW YORK, *August 5th*, 1868.

Thirty months after date, we promise to pay to the order of ourselves, one thousand dollars, at , value received, with current rate of exchange on New York.

Signed and endorsed: M. SONNEBORN & CO.

That no part thereof has been paid, and there is now due and owing from the defendants to the plaintiff the sum of one thousand dollars, with interest from the 8th day of February, 1871.

Cause of action 3rd.

For third cause of action:

That, at said city of New York, on the 5th day of August, 1868, the defendants made, endorsed, and delivered to the plaintiff their certain promissory note, of which the following is a copy:

$1,000.00.] NEW YORK, *August 5th*, 1868.

Thirty-five months after date, we promise to pay to the order of ourselves, one thousand dollars, at , value received, with current rate of exchange on New York.

Signed & endorsed: M. SONNEBORN & CO.

That no part thereof has been paid, and there is now due and owing thereon from the defendants to the plaintiff the sum of one thousand dollars, with interest from the 8th day of July, 1870.

239 *Cause of action 4th.*

For fourth cause of action:

That, at said city of New York, on the 5th day of August, the defendants made, endorsed, and delivered their certain promissory note to the defendant, of which the following is a copy:

$1,000.00.] NEW YORK, *August 5th*, 1868.

Twenty-five months after date, we promise to pay to the order of ourselves one thousand dollars, at , value received, with current rate of exchange on New York.

Signed & endorsed: M. SONNEBORN & CO.

That no part thereof has been paid, and that there is now due and owing thereon, from the defendants to the plaintiff, the sum of one thousand dollars, with interest from the 8th day of September, 1870.

Cause of action 5th.

For a fifth cause of action:

That, at said city of New York, on the 8th day of March, 1870, the defendants made, endorsed, and delivered to the plaintiffs their certain promissory note, of which the following is a copy:

$1,000.00.] NEW YORK, *March 8th*, 1870.

Six months after date, I promise to pay to the order of myself, one thousand dollars, at the office Sonneborn & Co., N. Y., value received, with current rate of exchange on New York.

Signed and endorsed: M. SONNEBORN.

240 That no part of said note has been paid, and there is now due and owing thereon from the defendant to the plaintiff the sum of one thousand dollars, with interest from the 11th day of September, 1870.

Cause of action 6th.

For a sixth and last cause of action:

That, at the city of Mansfield, in the State of Ohio, one Dillenhoeser & Co. made and delivered to M. Sonneborn their certain promissory note, of which the following is a copy:

$823 $\frac{71}{100}$.] MANSFIELD, OHIO, *January 8th*, 1869.

Six months after date, we promise to pay to the order of M. Sonneborn, eight hundred and twenty-three $\frac{71}{100}$ dollars, at Mansfield, Ohio, value received.

(Signed) DETTENHOESER & CO.

That, thereafter, said note was endorsed by the defendant, M. Sonneborn, and thereafter, and before the maturity thereof, the same came lawfully to the possession of the plaintiff, for value; that said note was duly presented for payment, and payment thereof demanded, which was refused; and, therefore, said note was protested, for non-payment, of which defendants had due notice. That no part of said note has been paid, and there is now due and owing from the defendants to the plaintiff the sum $823 $\frac{71}{100}$, with interest from the 11th day of July, 1869.

Therefore the plaintiff demands judgment against the defend-
241 ants, for the sum of five thousand seven hundred and eighty-three $\frac{83}{100}$ dollars, with interest on the foregoing several sums, as aforesaid, besides cost and disbursements of this action.

RUNKLE & ENGLEHART,
Pl'ff's Att'ys.

CITY AND COUNTY OF NEW YORK:

Jonas Sonneborn, being duly sworn, says that he is the above-named plaintiff; that the foregoing complaint is true, to his own knowledge, except as to the matter therein stated on information and belief, and as to those matters he believes them to be true.

JONAS SONNEBORN.

Sworn to before me, this 24th day of April, 1873.

C. R. CHEEVER,
Notary Public, City & County of New York.

Judgment roll on failure to answer.

Supreme court of New York.

CITY AND COUNTY OF NEW YORK:

JONAS SONNEBORN, PLAINTIFF,
vs.
MEYER SONNEBORN AND B. DILLENHOESER, defendants.

Statement for judgment.

Amount claimed in summons				5,783 83
Interest				1,088 77
Cost of statute		815		6,872 60
	Clerk entering judgment	1		
242	Affidavits		50	
	Transcript & docketing		24	
Serving complaint & summons		1		
Sheriff's fees on execution			69	18 43
				86,891 03

CITY AND COUNTY OF NEW YORK, *ss:*

I, Albert Engelhart, one of the plaintiff's attorneys in the above action, being duly sworn, say' that no answer, demurrer, or notice of appearance has been received or served in pursuance of requirement of the summons in said action, and that the disbursements above mentioned have been made in said action, or may be necessarily made or incurred therein.

I. ALBERT ENGLEHART.

Sworn to before me this the 1st day of May, 1873.

GEO. HARDIE,
Notary Public, N. Y. Co.

No. 129.—*Judgment, May* 1*st*, 1873.

The summons in this action having been personally served on Meyer Sonneborn, the defendant, on the 10th day of April, 1873, and no answer or demurrer to the complaint having been received by the plaintiff's attorney as required by the summons:

Now, on motion of Mess'rs Runkle & Englehart, pl'ff's attorneys, it is hereby adjudged that Jonas Sonneborn, the plaintiff, recover of Meyer Sonneborn and B. Dittenhoeser, the defendants, the sum of six
243 thousand eight hundred and seventy-two & $\frac{50}{100}$ dollars the amount claimed and interest, with eighteen & $\frac{43}{100}$ dollars cost and disbursements, amounting in the whole to the sum of six thousand eight hundred and ninety-one dollars and three cents.

(Endorsed:) Filed May 1st, 1873, at 12 o'clock, 38 min.

All of which we have caused by these presents to be exemplified, and the seal of our said supreme court to be hereunto affixed.

Witness John R. Brady, justice, at the city of New York, the 2nd day of May, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-seventh.

[SEAL.] CHA'S E. LOEW, *Clerk.*

I, John R. Brady, presiding justice of the supreme court of the State of New York, for the city and county of New York, do hereby certify that Charles E. Lowe, whose name is subscribed to the preceding exemplification, is the clerk of the said county of New York, and clerk of said supreme court for said county, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, May 2nd, 1873.

JNO. R. BRADY,
Justice.

241 STATE OF NEW YORK,
City and County of New York, ss:

I, Charles E. Loew, clerk of the supreme court of said State, in and for the city and county of New York, do hereby certify that John R. Brady, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State, in and for the city and county of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of the said court this the 2nd day of May, 1873.

[L. S.] CHARLES E. LOEW, *Clerk.*

Verdict and judgment in city court of Eufaula.

JUNE 12TH, 1873.

JONAS SONNEBORN
vs.
MEYER SONNEBORN. } No. 110.

Came the plaintiff by attorneys, and defendant being called came not, but made default, and the plaintiff's damages being uncertain, then came a jury of good and lawful men, to wit, T. J. Cannon, foreman, and eleven others, who upon their oaths say, they assess the plaintiff's damages at six thousand nine hundred and forty four & $\frac{13}{100}$ dollars.

It is therefore considered by the court that the plaintiff recover
245 of the defendant the sum so assessed, and also the cost in this behalf expended, for which execution may issue.

THE STATE OF ALABAMA,
Barbour County:

I, A. T. Spence, clerk of the city court of Eufaula, in said State and county, do hereby certify that the foregoing eleven pages, and a part of another, contain a correct copy of all the proceedings on file or of record in my office, in the case therein stated of Jonas Sonneborn against Meyer Sonneborn.

Given under my hand and seal of office this the 21st day of October, A. D. 1873.

[SEAL.] A. T. SPENCE, *Clerk.*

[State stamp & cancelled by A. T. S. & Co., 21st Oct., '73.]

Original affidavit of M. Sonneborn.

The defendants next introduced as a part of their evidence the original affidavit made by Meyer Sonneborn, the plaintiff in this action, on the 27th day of May, 1873, in the circuit court of Barbour County, Alabama, for the continuance of the cause then pending in said court in favor of A. T. Stewart & Co. against him, the said Meyer Sonneborn, which affidavit is in words and figures as follows, to wit:

Affidavit for continuance in Barbour circuit court.

Suit in the circuit court of Barbour County, Ala., May term, 1873.

A. T. STEWART & Co. }
vs. }
MEYER SONNEBORN. }

246 In open court this day comes the defendant in the above stated case, who, being sworn, states that he is not ready for trial in this case:

First. Because of the absence of the testimony of William Cohen, who resides in the city of New York, but who at this time is absent temporarily from his home on a visit to Europe. That affiant did not have time since the reversal of this cause in the supreme court, and the time when said Cohen left New York for Europe to take the depositions of said Cohen, but that he is advised and believes that said Cohen will return early in September, and that he is satisfied he can have his testimony here by the next term of this court; that said Cohen, if present or examined by interrogatories, would swear that he was one of the firm of E. Leipzeiger after April, 1866. That affiant withdrew from said firm in April, 1866, and shortly after started in business for himself in Mansfield, Ohio; that in August, 1866, the firm of E. Leipzeiger & Co. purchased of A. T. Stewart & Co., the plaintiffs, a bill of goods of considerable amount, about $3,000; that said bill of goods were boxed up and addressed to affiant in Mansfield, Ohio, from the store of plaintiffs, and that the witness Cohen, in person, gave notice to the plaintiffs
247 shortly after April, 1866, of his own admission into the firm of E. Leipzeiger & Co., and of the withdrawal of affiant from said firm; that said witness is positive as to the time of notice, and of the fact that he in person gave said notice to the plaintiffs, and that at the time said bill of goods, in August, 1866, were purchased of plaintiffs and boxed up and addressed to Mansfield, Ohio, to affiant, that it was well known to the house of plaintiffs, and to the plaintiffs themselves, that the defendant had withdrawn from the firm of E. Leipzeiger & Co. and was going in business for himself in Mansfield, Ohio, and that his withdrawal from said firm was generally known in New York in the summer of 1866.

Second. That he is not ready for trial because of the absence of the testimony of the bookkeeper of the firm of E. Leipzeiger & Co., whose name is Gabriel, but whose first name affiant does not at this

time remember; that since the reversal of said cause in the supreme court he has not had the time to procure the testimony of said Gabriel; that said Gabriel did reside in the city of New York, but that during a recent visit to New York he could not ascertain the exact whereabouts of said Gabriel, but that he has instituted inquiries for him and is satisfied he can ascertain his present residence, and have his testimony
248 here by the next term of this court. That said Gabriel, if present, or examined by interrogatories, would swear that he was the bookkeeper of E. Leipzeiger & Co. in April, 1866; that defendant withdrew from said firm in April, 1866, and started business for himself in Mansfield, Ohio; that witness gave notice to all the persons and firms with which said E. Leipzeiger & Co. had previously dealt; of the withdrawal of the defendant from said firm; that he gave this notice verbally, and that he notified the plaintiffs of said withdrawal; that this notice was given shortly after said withdrawal took place, and certainly by or before August, 1866; that the fact of said withdrawal on the part of defendant was generally known in New York among their business friends in the summer of 1866.

Witness would further swear that goods were purchased in August, 1866, of the plaintiffs, and boxed up, marked to defendant in Mansfield, Ohio, and shipped direct from the house of plaintiffs to defendant, to Mansfield, Ohio, and that when this transaction occurred it was well known to the plaintiffs that the defendant had withdrawn from the said firm of E. Leipzeiger & Co., and had started in business for himself in Mansfield, Ohio.

That the short time intervening between the reversal of this case in the supreme court, and the convening of the present term of this
249 court, had prevented the defendant from being ready for trial at the present term. But that he expects to have the testimony of both said witnesses, Cohen and Gabriel, here by the next term of this court.

That this application is not made for delay, but that defendant may have a fair trial in the premises.

MEYER SONNEBORN.

Sworn to & subscribed before me this 27th of May, 1873.

A. T. SPENCE, *Clerk.*

And further that he expects to prove by the testimony of both said witnesses, Cohen and Gabriel, that he never was a member of any firm or partnership in which any person who was known or called Edward Leipzeiger was a member; that he never was a member of any firm or partnership which was known or called by the firm-name of Edward Leipzeiger & Co.; that the firm or partnership of E. Leipzeiger & Co., of which defendant was a member, was composed of Elkin Leipzeiger and defendant, and no other persons during the time defendant was a member of said firm of E. Leipzeiger & Co., which was up to April 16th, 1866.

Filed in office May 27th, 1873.

A. T. SPENCE, *Clerk.*

Testimony of Eli S. Shorter.

The defendants next introduced as a witness in their behalf Eli
250 S. Shorter, who testified that he resided in the city of Eufaula, Alabama; was a lawyer by profession, had been practicing law over twenty-five years; that before the commencement of the suit in the circuit court of Barbour County, Alabama, by A. T. Stewart & Co.

against Meyer Sonneborn, he was consulted by letters from A. T. Stewart & Co. as to his legal right to recover the debt sued for out of Meyer Sonneborn, as a late member of the firm of E. Leipseiger & Co., who had done business in the city of New York. He advised them that in his opinion Meyer Sonneborn was liable in law for their debt. After this advice was given suit was instituted in the circuit court of Barbour County by A. T. Stewart & Co. against Sonneborn.

Witness further testified that after the rendition of the judgment in the city court of Eufaula, on the 12th day of June, 1873, in favor of Jonas Sonneborn against Meyer Sonneborn, he notified A. T. Stewart & Co. of the fact that Meyer Sonneborn had suffered a judgment to go against him by default in the said city court in favor of his brother, Jonas Sonneborn, for a large sum of money, and had advertised by hand-bills his entire stock of goods in Eufaula for sale at low rates.

Hand-bill.

(Copy of hand-bill.)

Take notice!

NEW YORK STORE.

I will sell for the next thirty days my entire stock, consisting of
251 dry-goods, calicoes, hosiery, gloves, straw goods; a full line of white goods, such as Swiss, *B*ictoria, and Bishop lawns; plain, striped, and plaid cambrics and nainsooks, embroideries, &c. Hats and caps, boots and shoes, at and below New York cost.

Call and convince yourself.

M. SONNEBORN,
New York Store.

EUFAULA, ALA., *August 1st*, 1873.

And that, in opinion of witness, he had by these acts made himself liable to be proceeded against for involuntary bankruptcy under the bankrupt law, and that if the attorneys of A. T. Stewart & Co., in New York City, concurred with him in this opinion given, they could make out the petition in New York to have Meyer Sonneborn declared an involuntary bankrupt and send it out to witness at Eufaula; the petition was prepared in New York City by the attorneys of A. T. Stewart & Co., duly sworn to there, and sent to witness by mail; petition was filed in the bankrupt court at Montgomery, Alabama, and the warrant for the seizure of Sonneborn's goods was obtained after the petition was so filed. But witness Shorter testified that he did not advise Stewart & Co., the defendants, to begin the bankrupt proceedings, but did advise them that, in his opinion, he had committed an act of bankruptcy.

252 *Testimony of Thornton.*

Defendants next introduced as a witness in their behalf Thornton, who testified that he was a merchant, and had been for six or seven years, but was then only twenty-two or three years old, and resided in the city of Eufaula, Alabama; that he was there in August, 1873, when the store-house occupied by Meyer Sonneborn was closed up by the United States deputy marshal, under an order from the bankrupt court at Montgomery, Alabama, in favor of A. T. Stewart & Co.; that

he and Edward Martin were employed by the deputy marshal to examine the goods of Sonneborn that had been seized by the marshal and make an inventory thereof; that he carefully made an inventory of all of said goods, measuring every piece of the different kinds of cloth goods; that he obtained the cost mark of said goods from Henry Price, the chief clerk, and who then had the control and management of said goods in the store-house—Sonneborn himself then being absent in Texas; that the total valuation of all of said goods, according to the cost-mark upon them, was eight thousand dollars; that parts of said stock of goods appeared to have been on hand for some time, was old and out of style, and in some particular lines of goods the stock was largely in excess for such a market; that, in the opinion of
253 witness as a merchant, the entire stock of goods, taken as a whole, were not worth over forty per cent. upon their cost-mark; that some of the goods were slightly damaged when the inventory was taken; that he and the said Edward Martin, under the directions of the deputy marshal, packed all the goods in boxes, nailed them up, and delivered them to the deputy marshal.

That in October, 1874, when the goods were surrendered to Meyer Sonneborn, the deputy marshal again called upon him to examine the goods as they were unpacked, and to ascertain if all the goods were there, and to what extent, if any, they had been damaged during the time they had been kept in the warehouse; he assisted in unboxing the goods, and upon comparison with the original inventory taken of them when they were first seized, he found that the goods were all there, and that the damage they had sustained during the time they were in the custody of the deputy marshal was very little, not exceeding five per cent.

On cross-examination witness Thornton testified that the goods were worth a great deal more than forty per cent. to a merchant who was going on regularly in business, but that he did not think they would be worth over forty per cent. to sell them at auction, and that is what he means by saying that the goods were worth only forty
254 per cent. at the time they were seized, and that he and Martin did not make said inventory when the goods were first seized, but that it was made about a month or more after the goods had been seized and the store closed.

Testimony of E. Martin.

The defendants next introduced as a witness in their behalf Edward Martin, who testified that he lived in the city of Eufaula, and in company with Thornton, was called upon by the deputy United States marshal to make an inventory and appraisement of the goods of Meyer Sonneborn, referred to in the testimony of the said Thornton; that he and Thornton made such inventory and appraisement, and that the value of the entire stock of goods, according to the cost mark upon them, was eight thousand dollars: that he thought the cash value of the goods would not have exceeded over fifty per cent. on the cost mark; that many of the goods were old style and looked like they might have been purchased at auction sales; that he assisted said Thornton in boxing of said goods; he was not present when the goods were unboxed in October, 1874, and does not know to what extent, if any, they were damaged while in the custody of the marshal.

Witness Martin, on cross-examination, testified that he was to-
255 day at the time of the trial not twenty years old; had never

had any experience in dry goods business prior to August, 1873, but had had some little since.

Defendants next introduced in their behalf the depositions of the following-named witnesses, to wit: William Libbey, B. C. Hardenbrook, James F. Alden, and John D. Wilson, which depositions, by the written consent of counsel, although taken in the original suit of A. T. Stewart & Co. against Meyer Sonneborn, in Barbour County circuit court, were allowed to be introduced as evidence in this case, so far as the testimony therein contained was legal and pertinent to the issue in this case (which depositions are hereby referred to and adopted as a part of this bill of exceptions).

256 *Deposition of Ja's F. Alden.*

THE STATE OF ALABAMA:

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

To Henry H. Rice, greeting:

Know ye, that we, having full faith and confidence in your prudence and competency, have appointed you commissioners, and by these presents do authorize you, or any one or more of you, at such time and place as you may appoint, to call before you and examine James F. Alden, as witness in the above-stated case, now pending and at issue in our circuit court at Clayton, in Barbour County, of the State aforesaid, on oath, to be by you administered upon interrogatories attached to this commission, to take and certify the deposition of the witness and return the same to our said court, to be holden on the first Monday in November, 1870, instant, at Clayton, under your hands and seals.

Witness my hand this 29th day of July, A. D. 1871.

A. T. SPENCE, *Clerk*

In the circuit court of Barbour County, Alabama. Fall term, 1870.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

257 Interrogatories to be propounded to and answered by James F. Alden, a material witness for the plaintiffs, and who resides in the city and State of New York.

I. Do you know the parties to this suit?

II. In what business were you engaged in the month of March, 1867? If you answer that you were in the employ of the plaintiffs in this suit, as a salesman or clerk, state whether the defendant Sonneborn came into plaintiffs' house of business on the 19th day of March, 1867, and applied for a credit in his individual name for a business of his own. If so, where did he say he was to do business? Tell all that was said by Sonneborn on that occasion in respect to his business.

III. If you say that Meyer Sonneborn did come in plaintiffs' store in New York on the 19th day of March, 1867, did he say anything in respect the members of the firm of E. Leipzeger & Co., when said firm

commenced business, where they did business, and when said firm dissolved? If so, tell all about it, and tell all he said.

IV. Was E. Leipzeiger in plaintiffs' store on same day, the 19th
258 day of March, 1867; if so, what did he go there for? Did he buy or offer to buy any goods? In whose name did he buy or offer to buy? When did E. Leipzeiger first give you notice of the dissolution of the firm of E. Leipzeiger & Co.?

V. Tell all you know to benefit the plaintiffs.

SHORTER & BROTHER,
Pl'ffs' Att'ys.

Defendant objects to that portion of the third direct interrogatory, calling for what defendant said on the 19th day of March, A. D. 1867, about the firm of E. Leipzeiger & Co., and to the answer to that portion of said interrogatory as illegal and irrelevant.

Defendant also objects to the fourth direct interrogatory, and to each sentence of said fourth interrogatory and the answers thereto, because the answers sought to be elicited thereby are immaterial, irrelavent, and illegal in this issue—and propounds the following cross-interrogatories:

1. 1st cross-interrogatory. In your answer to the 2nd direct interrogatory, do you answer entirely from your own recollection, or from papers and books or other documents? Do you tell what occurred between yourself and defendant on that day or some other day?

259 2. 2nd cross-interrogatory. How often did you ever see the defendant? Would you know him now if you met him in a crowd from any one else? Please describe his personal appearance and his peculiarities, if he has any. How do you know that the man you talked with on said 19th day of March, was defendant?

S. H. DENT,
Att'y for Def't.

Service accepted, copy, affidavit, and notice waived, and we consent for a commission to issue to Henry R. Rice, on the 29th day of July, 1871.

S. H. DENT,
Att'y for Def't.

Deposition of witness, sworn and examined under and by virtue of a commission issued out of the circuit *suit* of the State of Alabama, for Barbour County, in a certain case therein depending between Alexander T. Stewart, Francis Warden, George Fox, and William Libby, plaintiffs, and Meyer Sonneborn, defendant.

JAMES F. ALDEN, of the city of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I know the parties to this suit.

To the second interrogatory he saith: In the month of March, 1867, I was engaged as a clerk in the employ of A. T. Stewart & Co., the plaintiffs in this suit, in the city of New York, in their credit
260 department. I was not a salesman, but employed as a clerk in receiving applications for credits, and investigating the pecuniary condition and responsibility of parties applying to the plaintiffs for the purchase of goods upon credit. On the 19th day of March, 1867, Meyer Sonneborn, the defendant in this suit, came into the plaintiffs' store where I was then employed, and applied for a credit in his individual

name for a business of his own. He stated to me that he had started a business of his own in Mansfield, Ohio. That he was the "Co." of "E. Leipzeiger & Co." 1½ years previously; was some years at Galveston, Texas, as "Meyer Sonneborn," and the same in San Antonio. That he commenced present business last fall with a capital of $16,000, which was the amount of his interest in the concern of "E. Leipzeiger & Co.," dissolved in April, 1866. That they paid him by buying $16,000 worth of goods in their own name for his Mansfield business, and for which they paid. That he took stock in February, 1867, when he had a stock of $18,700. Book accounts nothing. That he had no liabilities for money, and owed for merchandise $3,000. That he had $375 in money in bank, making a capital of $16,000. That he sold about $25,000 last season, but cleared nothing; came out about whole. That he had reduced his stock to $17,000, and owed less than $1,000 to-day. Rent, $300;
261 all expenses about $2,000. That he was insured for $20,000. Would buy this time $4,000 to $5,000. That he was a brother of Sonneborn of the firm of Sonneborn & Co., of Church street, New York. That he never failed to pay one hundred cents on the dollar; was worth $25,000 clear when he came from Texas, all of which he put into the business of E. Leipzeiger & Co. That he put into that firm $25,000, and lost $9,000 in 18 months, and took out $16,000, which is all he is worth now. Never bought goods in his own name, except of H. B. Claflin & Co. and of Sonneborn & Co., to whom he refers.

To the third interrogatory he saith: I can only answer this as I did the second interrogatory. In that I have answered all that he said.

To the fourth interrogatory he saith: I cannot say whether E. Leipzeiger was or not in the plaintiffs' store on that day, the 19th day of March, 1867.

To the fifth interrogatory he saith: I know that E. Leipzeiger & Co. kept on buying goods in their firm-name of the plaintiffs, all along down to March 19th, 1867, and the first notice *were* given to or received
262 by the plaintiffs of the dissolution of the firm of "E. Leipzeiger & Co." was the one referred to by me in my answer to the second interrogatory. I was then employed in the credit office of the plaintiffs, along with M'r Benjamin C. Hardenbrook and John D. Wilson; M'r Hardenbrook having charge of that department, under M'r William Libbey, now one of the firm of A. T. Stewart & Co.

JAMES F. ALDEN.

Cross interrogatories:

To the first cross interrogatory he saith: I answer the second direct interrogatory both from my own recollection, and from the statement which the defendant made to me on the 19th of March, 1867, which I took down at the time in writing. I tell what occurred between myself and the defendant on the 19th day of March, 1867, and not on any other day.

To the second cross interrogatory he saith: I know that the man I talked with on the 19th day of March, 1867, was Meyer Sonneborn, from what he himself told me, and from information subsequently received from Jonas Sonneborn of Sonneborn & Co., and E. Liepzeiger, his partner. I do not know now whether I could identify him or not; I presume I could, if he should apply to us for credit.

JAMES F. ALDEN.

263 I, Henry H. Rice, the commissioner in said commission named, do hereby certify that the evidence of the witness, James F. Al-

den, was taken down under oath, and subscribed by him in my presence on the 11th day of November, 1870, at the city of New York, in the county and State of New York, and that I have personal knowledge of said witness.

Witness my hand and seal.

[SEAL.] HENRY H. RICE,
Commissioner.

We consent that the within depositions may be read in evidence on the trial of this cause without any objection for irregularity or defect in the taking.

July 20th, 1871.

S. H. DENT,
Att'y for Def't.
SHORTER & BROTHER,
Att'ys for Pl'ffs.

264 *Deposition of William Libbey.*

STATE OF ALABAMA:

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

To Henry H. Price, greeting:

Know ye, that having full faith and confidence in your prudence and competency, we have appointed you commissioner, and by these presents do authorize you at such time and place as you may appoint, to call before you and examine William Libbey, of the township of Franklin, county of Bergen, State of New Jersey, as witness in the above stated case, now pending and at issue in our circuit court of Clayton, in Barbour County, of the State aforesaid, on oath to be by you administered, upon interrogatories attached to this commission, to take and certify the deposition of the witness and return the same to our said court, to be holden on the 7th day November next instant, at Clayton, Alabama, under your hands and seals.

Witness my hand this 29th of July, A. D. 1871.

A. T. SPENCE,
Clerk of the Circuit Court of Barbour County, Alabama.

In the circuit court of Barbour County, Alabama, fall term, A. D. 1871.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

Interrogatories to be propounded to and answered by William Libbey, a material witness for the plaintiff, and who resides in the township of Franklin, county of Bergen, and State of New Jersey.

1. Do you know the parties to this suit?

2. Where did you reside, and in what business were you engaged in the year 1867? If you answer that you were engaged in mercantile business, with the firm of A. T. Stewart & Co. in New York City, please state how you were connected with said firm.

3. If you sold and delivered during the year 1867, any goods,
265 wares, merchandise, &c., to the firm of E. Leipziger & Co., append a bill of same to your answers, and state where the said goods were sold and delivered, the prices agreed to be paid for the same, and state whether the prices as charged on the bills appended to your answers were the prices the defendants promised and agreed to pay for the same; whether the goods, &c., so sold and delivered were worth the prices charged therefor, and whether those prices were agreed on before the sale and delivery of the goods, &c.?

4. Upon what time or credit were the goods purchased, and have the same or any part thereof been paid for; if so, how much, and when was said payment made?

5. Who composed the firm of E. Leipziger & Co.? Where were they engaged in business? If you answer that they carried on business in the city of New York, or elsewhere, state whether the plaintiffs had had dealings with them by selling them goods, &c., or in any other prior to the sixth (6th) day of April, 1867, and also prior to the sales and deliveries of goods, wares, merchandise, &c., before enquired of; if so, how often and when?

6. Is the firm of E. Leipziger & Co. dissolved? If so, when did they dissolve, and how did you get information of it? State the facts as to how and when notice of the dissolution of the firm was brought to the knowledge of yourself or plaintiffs. When did plaintiffs get notice of the dissolution, and how.

266 7. Tell all you know to benefit the plaintiffs.

SHORTER & BROTHER,
Pl'ffs' Att'ys.

Cross interrogatories.

1. How do you know who composed the firm of E. Leipziger & Co.? Give the particular time when you first knew who composed the said firm. Did the firm remain the same as long as there was such a firm?

2. Might not some other member of the firm of A. T. Stewart & Co., or some agent of said firm prior to 1867, have had notice of the dissolution of the firm of E. Leipziger & Co. other than yourself, if you had no notice prior to 1867, and before the year 1867?

3. Who composed the firm of A. T. Stewart & Co. in the years 1866 and 1867, and how many salesmen or agents did said firm employ during said years 1866 & 1867? Answer as correctly as you can.

S. H. DENT,
Def't's Att'y.

Service accepted. Copy and affidavit waived, and we consent for commission to issue to Henry H. Price, on the 29th day of July, 1871.

S. H. DENT,
Def't's Att'y.

267 Deposition of witness, sworn and examined under and by virtue of a commission issued out of the circuit court of the State of Alabama, for Barbour County, in a certain cause therein depending between Alexander T. Stewart, Francis Warden, George Fox, and William Libbey, plaintiffs, and Meyer Sonneborn, defendant.

WILLIAM LIBBEY, of the township of Franklin, county of Bergen,

and State of New Jersey, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I know the parties to this suit.

To the second interrogatory he saith: I resided in the township of Franklin, county of Bergen, and State of New Jersey, in the year 1867, and was then and still am engaged in the mercantile business in the city of New York, as a member of the firm of A. T. Stewart & Co.

To the third interrogatory he saith: During the year 1867 my firm sold and delivered to the firm of E. Leipziger & Co., in the city of New York, a quantity of goods and merchandise, bills of items of which are hereto annexed marked Exhibits A, B, and C. These bills are correctly made out from the books of original entry of said A. T. Stewart
268 & Co., and the goods for which said charges were made were sold and delivered by said A. T. Stewart & Co. to E. Leipziger & Co. at the time of the respective dates specified in said bills, and for the prices therein named. These goods were worth the prices charged therefor in said bills, and the prices were agreed on before the sale and delivery of the same, and said E. Leipziger & Co., at the time of purchasing said goods, promised and agreed to pay the prices charged therefor in said bills. Failing to get our pay for these goods, we put the claim into a judgment in this city, which remains wholly unsatisfied.

To the fourth interrogatory he saith: A part of these goods were sold on a credit of thirty days, and a part on ninety days, and no part of the same have been paid for.

To the fifth interrogatory he saith: The firm of E. Leipziger & Co. was composed of Edward Leipziger and Meyer Sonneborn, and they carried on business in the city of New York. We had dealings with them prior to the 6th of April, 1867, and also prior to the sale and delivery of the goods and merchandise enquired of; we sold them goods very frequently during every month, commencing in August, 1865, and continuing down to about the 19th of March, 1867.

To the sixth interrogatory he saith: I believe the firm of E. Leip-
269 ziger & Co. is dissolved. On the 19th day of March, 1867, Meyer Sonneborn applied to A. T. Stewart & Co. for a credit in his individual name for a business which he said he had started in Mansfield, Ohio, and stated that he was the "Co." of the firm of E. Leipziger & Co. for one and a half years previously, and that that firm dissolved in April, 1866. This was after the purchase by them of the goods described in the invoices hereto annexed, and was the first knowledge or information we ever had of the dissolution of the firm of E. Leipziger & Co., or that Sonneborn had left that firm. On the 6th day of April, 1867, Edward Leipziger called at our store and informed us also of the dissolution of their firm, and said that all of their liabilities would be paid by May 1st, 1867.

To the seventh interrogatory he saith: The goods mentioned in the invoices hereto annexed were sold and delivered by the plaintiffs to E. Leipziger & Co. upon the joint credit of the joint members of the firm, the prices for the same and the terms and the day of payment were agreed upon, and no term of the contract was left unsettled by the parties. A. T. Stewart & Co. never sold or delivered to Edward Leipziger individually any goods whatever, and never had an account with him except as "E. Leipziger & Co." at the time of the sale and delivery of the goods in question. We rendered accounts of the same to the firm of E. Leipziger & Co. which they retained and made no objection to them. The credit was given in consideration of Meyer Sonneborn's liability
270 and responsibility with Leipziger, and no notice of any kind was

ever had by the plaintiffs or given them by E. Leipziger & Co. of the dissolution of their firm, or of Sonneborn's retirement from it until the 19th day of March, 1867, after all of the goods inquired of were sold and delivered to them. On the 8th of August, 1865, Edward Leipziger applied to A. T. Stewart & Co. for a credit for the firm of "E. Leipziger & Co.," stating that Meyer Sonneborn and himself composed that firm, and that they commenced business in New York in June, 1865, with a cash capital paid in of $75,000. Upon that statement we opened an account with E. Leipziger & Co., and sold them goods on credit, among them those inquired of. When Sonneborn applied to us for credit in his individual name, on the 19th of March, 1867, he stated then that he was the "Co." of the firm of E. Leipziger & Co. for one and a half years previously, and that they dissolved in April, 1866. Knowing that they commenced in June, 1865, Sonneborn's statement in March, 1867, that he was the "Co." of E. Leipziger & Co. 1½ years previously, and that they dissolved in April, 1866, eight months after they started, was so improbable that we refused him credit, and did not sell or ship him any goods whatever.

We never opened any account with Meyer Sonneborn individually, and never sold him any goods except as a member of the firm of E. Leipziger & Co., to my knowledge; and I never heard or knewof his removal to Mansfield, Ohio, until the 19th of March, 1867; and no mem-
271 ber of our firm ever called at the store of E. Leipziger & Co. to enquire when Sonneborn withdrew, and we never sent any person there for that purpose prior to that time. These goods mentioned in Exhibit A, B, and C were delivered in the usual manner at the place of business of E. Leipziger & Co. in this city; receipts therefor taken in our merchandise receipt-book at the time. I have cut out these original receipts and attached the same hereto, marked Exhibits D, E, and F.

Cross-interrogatories:

To the first cross-interrogatory he saith: Edward Leipziger himself informed us who composed the firm of E. Leipziger & Co. On the 8th of August, 1865, he applied to A. T. Stewart & Co. to buy goods upon credit, and stated that his firm was E. Leipziger & Co., and that it was composed of Meyer Sonneborn and himself. This firm remained the same, to the best of my knowledge and belief, until the 19th of March, 1867; at least we never knew of any change in the firm until that time.

To the second cross-interrogatory he saith: No member of the firm of A. T. Stewart & Co., other than myself, prior to 1867, would have had notice of the dissolution of the firm of E. Leipziger & Co., and no agent of said firm would have had such notice without my knowing it. The entire business is under my supervision, and all notices and letters are first brought to my attention, and then under my directions are entered in the books of the firm. The only members of the firm of A. T. Stew-
art & Co. residing in this country for many years past are A. T.
272 Stewart and myself. All the domestic correspondence and the management of the business of the firm here in its details is under my charge. Mr. Stewart has general supervision and immediate charge of all the foreign affairs connected with it. The matter inquired of would not probably come to his notice at all; if it did it certainly would be sent to me, having charge of that branch of the business. For these reasons I can say with confidence we had no notice of any kind prior to March 19th, 1867, of the dissolution of the firm of E. Leipziger & Co.

To the third cross-interrogatory he saith: In 1866 the firm of A. T.

Stewart & Co. was composed of Alexander T. Stewart, Francis Warden, and George Fox. In January, 1867, I became a member of the firm. We had, during 1866 and 1867, between one and two thousand salesmen and agents in our employ, connected with some twenty different departments of specialties in our business, all under my immediate personal supervision and charge.

WILLIAM LIBBEY.

Sworn to before me, October 27, 1870.

HENRY H. RICE,
Commissioner.

Resworn to before me, August 2, 1871.

HENRY H. RICE,
Commissioner.

273 No. 6282, invoice. Sales, 355. Folio 636.

NEW YORK, *January 23rd*, 1867.

E. Leipziger & Co., 83 *Reade st., city, bought of Alex. T. Stewart & Co., Broadway, Chambers, and Reade streets.*

(Terms: 90 days, 3 % off, payable in money bankable in New York City.)

	10 p'c's ¾ F'ef cass	302½	80	241 80		
	2 " " " "	77½	100	77 25		
	6 " wool tweed	178	80	142 40		
	1 " 6-4 cass	25	200	50 00		
						511 45
Jan. 31st	6 p'c's satinett	158[2]	65	103 03		103 03
						614 48

Exhibit A referred to by the witness William Libbey.—Henry H. Rice, commissioner.

No. 6756, invoice. Sales, 374. Folio 31.

NEW YORK, *March 2nd*, 1867.

E. Leipziger & Co., 83 *Reade st., city, bought of Alex. T. Stewart & Co., Broadway, Chambers, & Reade streets.*

Terms: 30 days, 1 % off, payable in money bankable in New York City.)

		10 p'c's R. duck	407	45	183 37		
		4 " bl'k stripe	220[2]	20	44 15		
		3 " 4-4 check	161[1]	30	48 38		
		10 " Arctic canton	346	17[2]	60 59		
							336 49
	M'ch 2nd	4 b. Baltimore duck	814	45	366 30		366 30
	" 8th	2 bales Tremont Bro. jean	161[3]	15	241 95		241 95
274	Mar. 19th	1 Sprague print	44	17	7 48		7 48
	" "	1 crash	13[2]	14	1 89		
	" "	1 diaper	....	....	1 85		
							3 74
							955 96

Exhibit B referred to by the witness William Libbey.—Henry H. Rice, commissioner.

No. 6767 invoice. Sales 365. Folio 331.

NEW YORK, *March 2nd*, 1867.

E. Leipzeiger & Co., 83 Reade st., city, bought of Alex. T. Stewart & Co., Broadway, Chambers, & Reade streets.

(Terms.—90 days, 3% off, payable in money bankable in New York City.)

	1 pc. Bedford ¾ cass	36¼	75	27 37		
	4 " ¾ Fcy " (asirs)	26¾	75	19 69		
	1 " " "	21	1 25	26 25		
	14 " " "	38 7-8	1 00	38 7 75		
	2 " " "	50	2 00	100 75		
	4 " D. & F. cass, (dassis)	122½	2 00	244 75		
						866 56
Mar. 19.	1 Sco. diaper			2 80		
	1 " "			2 10		
						4 90
						811 46

Exhibit C referred to by the witness William Libbey.—Henry H. Rice, commissioner.

275 JANUARY 23RD, 1867.

Lot.	Nos.	No. of packages.	For & where to deliver.	Order for delivery.	Forwarded by—	Delivered by—	Received by—
6,282	One	Case ..	E. Leipzeiger & Co., 83 Reade st	G. B ..... Bill	J. G. Olly	Ridron	E. L. & Co.

Exhibit D. William Libbey.—Henry H. Rice, commissioner.

MARCH 2ND, 1867.

Lot.	Nos.	No. of packages.	For & where to deliver.	Order for delivery.	Forwarded by—	Delivered by—	Received by—
6,756	Two	Cases	E. Leipzeiger & Co., 83 Reade st	Boyd ..... B	J. G. Olley	....	E. Leipzeiger & Co.

Exhibit E. William Libbey.—Henry H. Rice, commissioner.

6,767	One case & one p'ce ..	E. Leipzeiger & Co., 83 Reade st	Boyd	J. G. Olly	Keupe	E. Leipzeiger & Co., W. J. G.

Exhibit F. William Libbey.—Henry H. Rice, commissioner.

I, Henry H. Rice, the commissioner in said commission named, do hereby certify that the evidence of the witness, William Libbey, was taken down under oath and subscribed by him in my presence on the 2nd day of August, 1871, at the city of New York, in the county and State of New York, and that I have personal knowledge of said witness.

Witness my hand and seal.

[SEAL.] HENRY H. RICE,
Commissioner.

Fees, $20, paid by plaintiffs.

HENRY H. RICE,
Commissioner.

276 *Depositions of Wilson & Hardenbrook.*

In the circuit court of Barbour County, Alabama, fall term, A. D. 1870.

A. T. STEWART & Co.
vs.
MEYER SONNEBORN.

Interrogatories to be propounded to and answered by Benjamin C. Hardenbrook and John D. Wilson, material witnesses for the plaintiffs, and who reside in the city and State of New York.

I. Do you know the parties to this suit?

II. Where did you reside during the months of January, February, March, April, May, and June, in the year A. D. 1867; and in what business were you engaged? If you answer that you were in the employ of plaintiffs as salesmen, during the time enquired of, please state whether you sold and delivered to the firm of E. Leipziger & Co. any goods, wares, and merchandise; and, if so, append a bill of the same to your answers, and state when the said goods, &c., were sold and delivered; the prices agreed to be paid for the same; and whether the prices as charged on the bills appended to your answers were the prices the defendants promised and agreed to pay for said goods; and were the goods, &c., worth these prices; and further, whether these prices were agreed upon before the sale and delivery of the goods, &c.

277 III. Upon what time or credit were the goods purchased, and have the same, or any part thereof, been paid for; if so, how much, and when paid?

IV. Who composed the firm of E. Leipziger & Co.? Where were they engaged in business? If you answer they were doing business in the State of New York, state at what place they carried on their business; and whether as salesmen or agents for plaintiffs you had had dealings with them by selling them goods, &c., or in any other way prior to the times of the sales and deliveries enquired of, above in second and third interrogatories, and prior to the 6th day of April, 1867? If so, how often, and when?

V. Is the firm of E. Leipziger & Co. dissolved? If so, when did they dissolve, and how did you get information of it? State the facts as to how and when a notice of the dissolution of the firm was brought to the knowledge of yourselves or plaintiffs? When did plaintiffs get a notice of the dissolution, and how?

VI. Tell all you know to benefit the plaintiffs.

SHORTER & BROTHER,
Pl'ff's Att'ys.

Service accepted, copy and affidavit waived, and we consent for commission to issue instanter to Henry H. Rice.

September 29th, 1870.

S. H. DENT,
Def'ts Attorney.

278 *Cross interrogatories.*

I. How do you know who composed the firm of E. Leipziger & Co. in the year 1867? When did you first know who composed said firm?

II. Can you say that no member of the firm of A. T. Stewart & Co., or no other agent of theirs, had any notice of the dissolution of the firm of E. Leipziger & Co., before you had such notice?

III. Who composed the firm of A. T. Stewart & Co. in 1866 and 1867, and how many salesmen or other agents did said firm employ during said years of 1866 & 1867?

S. H. DENT,
Def'ts Att'y.

Commission.

STATE OF ALABAMA:

A. T. STEWART & Co.
vs.
MEYER SONNEBORN.

To Henry H. Rice, greeting:

Know ye that we, having full faith and confidence in your prudence and competency, have appointed you commissioner, and by these presents do authorize you at such time and place as you may appoint, to call before you and examine Benjamin C. Hardenbrook and John D. Wilson, as witness in the above stated case now pending and at issue in our circuit court, at Clayton, in Barbour County, of the State aforesaid, on oath to be by you administered, upon interrogatories attached
279 to this commission, to take and certify the deposition of the witness, and return the same to our said court, to be holden on the 7th day of November next instant, at Clayton, Alabama, under your hands and seals.

Witness my hand this 5th day of October, A. D. 1870.

A. T. SPENCE,
Clerk of the Circuit Court of Barbour County, Alabama.

Deposition of Benjamin C. Hardenbrook.

Deposition of witnesses sworn and examined under and by virtue of a commission issued out of the circuit court of the State of Alabama, for Barbour County, in a certain cause therein pending, between Alexander T. Stewart, Francis Warden, George Fox, and William Sibley, plaintiffs, and Meyer Sonneborn, defendant.

BENJAMIN C. HARDENBROOK, of the city of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I know the plaintiffs personally, and the defendants only as purchasers of the plaintiffs.

To the second interrogatory he saith: I resided in the city of New York during the months of January, February, March, April, May, and June, 1867, and was engaged in the employ of the plaintiffs in their credit department. I had charge of that department under the
280 supervision of Mr William Libbey, investigating the pecuniary condition and responsibility of parties applying to the plaintiffs for the purchase of goods upon credit. I did not sell E. Leipziger & Co. any of the goods or merchandise inquired of. I do know of the sale of them, however, as the sales were reported to me at the time, bills of items of which are hereto annexed, marked Exhibits A, B, & C.

To the third interrogatory he saith: These goods were sold on a credit, some on thirty days, some on 90 days, as specified in the invoices hereto annexed. No part of the same have been paid for.

To the fourth interrogatory he saith: Edward Leipziger and Meyer Sonneborn composed the firm of E. Leipziger & Co., and they carried on business at 83 Reade street, in the city of New York. I did not sell them any goods, but all the sales of goods to them by A. T. Stewart & Co., from August, 1865, until March 19, 1867, were reported to me, in writing, at the time, by the salesmen.

To the fifth interrogatory he saith: I believe the firm of E. Leipziger & Co. is dissolved. The first knowledge I had of their dissolution was March 19th, 1867, at which time Meyer Sonneborn incidentally mentioned to Mr John F. Alden, an employe in my office, that his firm of E. Leipziger & Co. dissolved in April, 1866. Mr Alden took down this statement in writing at the time, and handed it to me, a copy of which is hereto annexed, marked "Exhibit D." On the 6th of April
281 following, Edward Leipziger also verbally notified the plaintiffs that the partnership was dissolved. He stated this to Mr John D. Wilson, who occupied the same desk with me, sitting directly opposite me. Mr Wilson made a written memorandum at the time of what Leipziger stated, and handed it to me. This was then copied upon the books of the plaintiffs, a copy of which is hereto attached (the original having been lost), marked "Exhibit F."

To the sixth interrogatory he saith: All notices of dissolutions or changes in copartnership to the plaintiffs, whether in writing or verbal, are, and always have been, for several years, and during the period inquired of, reported to me at the time, and no notice of dissolution, except as above stated by me, was ever received by the plaintiffs, to my knowledge. If any other notice had been received by the plaintiffs, I must have known it. There is no other place for it to go to. No inquiries were made by the plaintiffs, or by any agent of theirs, prior to March 19, 1867, of any person or firm as to the dissolution of E. Leipziger & Co., or as to the responsibility of Meyer Sonneborn, as there was no occasion for it. On that day he applied to the plaintiffs for a credit, in his individual name, for a business which he said he had started in Mansfield, Ohio. This application was declined, and the plaintiffs never opened an account with him.

BENJ. C. HARDENBROOK.

282 Sworn to before me Oct. 27, 1870.

HENRY H. RICE, *Commissioner.*

Cross-interrogatories:

To the first cross-interrogatory he saith: I know who composed the firm of E. Leipziger & Co. on the 8th of August, 1865. Edward Leipziger, one of that firm, called at the store of A. T. Stewart & Co., and

stated to M'r John D. Wilson, at my desk, that he was of the firm of E. Leipziger & Co.; that this firm was composed of Meyer Sonneborn and himself. M'r Wilson reduced this statement to writing at the time, and submitted it to M'r Libbey, after which I caused it to be entered on the books of A. T. Stewart & Co. We sold them goods under that firm name on this statement, from that time until March 19th, 1867, and I never heard of any change in their firm until that day, when Sonneborn came in and wanted a credit, in his individual name, for a business he said he had started in Mansfield, Ohio.

To the second cross interrogatory he saith: I can only answer this as I did the sixth direct interrogatory. M'r Libbey might have received notice of the dissolution before me; and so might M'r John F. Alden, or M'r John D. Wilson; but if they had, it certainly would have been given to me immediately, as the head of that department. I never knew an instance to the contrary.

283 To the third cross interrogatory he saith: Alexander T. Stewart, Francis Warden, and George Fox composed the firm of A. T. Stewart & Co. in 1866, and for many years previous thereto. On the first of January, 1867, M'r William Libbey became a partner with them, and has ever since been a member of that firm. I do not know how many salesmen or other agents they employed in 1866 and 1867.

BENJ. C. HARDENBROOK.

Sworn to before me Oct. 27, 1870.

HENRY H. RICE, *Com'r.*

Deposition of John D. Wilson.

JOHN D. WILSON, of the city of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I know the parties to this suit.

To the second interrogatory he saith: I resided in the city of New York during the months of January, February, March, April, May, and June, 1867, and I was engaged as a clerk in the employ of A. T. Stewart & Co., in said city, in their credit department. I did not act as salesman in selling the goods inquired of, but I authorized the sale and delivery of them to E. Leipziger & Co. at the prices and on the terms stated in the invoices attached, marked "Exhibits A, B, and C." These terms and prices were agreed upon before the sale and delivery

284 of the goods, and they promised and agreed to pay these prices therefor.

To the third interrogatory he saith: A part of the goods were sold on a credit of thirty days and a part on ninety days, and no part of the same have been paid for.

To the fourth interrogatory he saith: Edward Leipziger and Meyer Sonneborn composed the firm of E. Leipziger & Co., and they were engaged in business in the city of New York. I had dealings with them as agent for A. T. Stewart & Co. Edward Leipziger applied to the firm of A. T. Stewart & Co. for a credit for his firm of E. Leipziger & Co. on the 8th of August, 1865. His application was referred to me and I took his statement and reduced it to writing at the time, which is hereto attached, marked "Exhibit E." This statement was then submitted to Mr. William Libbey, who had the general management of the business of A. T. Stewart & Co. He fixed the terms of credit at thirty and ninety

days, and E. Leipziger & Co. very soon after commenced buying goods of A. T. Stewart & Co. under that statement, and continued buying almost every month down to March 19, 1867. Under general authority from A. T. Stewart & Co., I checked for delivery the goods and merchandise mentioned in Exhibits A, B & C, and they were delivered by my special authority to E. Leipziger & Co. The prices for the same and the day of payment were agreed upon, and no term of the contract was left unsettled by the parties. We rendered bills of these purchases to E. Leipziger & Co. at the time, who retained them without making any objection to them.

285 To the fifth interrogatory he saith: The firm of E. Leipziger & Co. is dissolved. The first knowledge I had of their dissolution was from the statement made by Meyer Sonneborn on the 19th of March, 1867, to Mr. John F. Alden, a clerk in the same office with me. On the 6th of April, 1867, Edward Leipziger came into my office and verbally notified me that the firm of E. Leipziger & Co. was dissolved, and stated to me that all their liabilities would be paid by May 1st, 1867. These were the only notices ever received by the plaintiffs of their dissolution to my knowledge. I made a memorandum of what Leipziger told me at the time, and had it entered on the books of A. T. Stewart & Co., a copy of which is hereto attached, marked "Exhibit F," the original having been mislaid or lost. I made diligent search for the original all through the office and in every place where it would be likely to be, but could not find it.

To the sixth interrogatory he saith: If there had been any other notice received by A. T. Stewart & Co. of the dissolution of the firm of E. Leipziger & Co., I certainly would have known it, as I am, and have been for many years past, in the credit department of A. T. Stewart & Co., and all notices of dissolutions and changes in partnerships would come to that department and to my knowledge. There is no other place for them. We made no inquiries of other houses prior to March 19, 1867, as to the dissolution of the firm of E. Leipziger & Co. or as to the responsibility of Meyer Sonneborn, and we never sold or shipped him any goods after that date, nor at any time before it except to him

286 as a member of the firm of E. Leipziger & Co.

JOHN D. WILSON.

Sworn to before me Oct. 27, 1870.

HENRY H. RICE, *Comm'r.*

Cross-interrogatories:

To the first cross-interrogatory he saith: I know who composed the firm of E. Leipziger & Co. in 1867 from what Edward Leipziger told me on the 8th of August, 1865. He said the firm was composed of Meyer Sonneborn and himself.

To the second cross-interrogatory he saith: They might; but if they had I would have been informed of it at once. All such notices are reported to the credit office as soon as received and entered on the books.

To the third cross-interrogatory he saith: Alexander T. Stewart, Francis Warden, and George Fox composed the firm of A. T. Stewart & Co. in 1866, and for many years previous thereto. On the first of January, 1867, Mr William Libbey became a partner with them, and has ever since been a member of that firm. I do not know how many salesmen or other agents they employed in 1866 & 1867.

JOHN D. WILSON.

Sworn to before me Oct. 27th, 1870.

HENRY H. RICE,
Commissioner.

287 No. 6282. Sales 355. Folio 636.

NEW YORK, *January 23d*, 1867.

M. E. Leipziger & Co., 83 Reade st., city, bought of Alexander T. Stewart & Co., Broadway, Chambers, and Reade streets.

(Terms: 90 days, 3 % off, payable in money bankable in New York City.)

	10 p'c's ⅞ f'c'y cass	302¼	80	241 80		
	2 " " " "	77¼	100	77 25		
	6 " Wood tweed	178	80	142 40		
	1 " ¾ cass	25	200	50 00	511 45	
Jan'y 31st.	6 p'c's satinett	158	65	102 03	103 03	
					$614 48	

Exhibit A, referred to by the witness' Benj. C. Hardenbrook, John D. Wilson.—Henry H. Rice, comm'r.

288 No. 6756. Sales 374. Folio 34.

NEW YORK, *March 2*, 1867.

M. E. Leipziger & Co., 83 Reade st., city, bought of Alexander T. Stewart & Co., Broadway, Chambers, and Reade streets.

(Terms, 30 days, 1 % off, payable in money bankable in New York City.

	10 p'c's R. duck	407	45	183 37	
	4 " bl'k stripe	220	20	44 15	
	3 " ¼ check	161	30	48 38	
	10 " Arctic canton	346	17	60 59	
					336 49
Mar. 2d.	1 B. Baltimore duck	814	45	366 30	
					366 30
Mar. 8th.	2 bales Tremont Bro. jean	1613	15	241 95	
					241 95
Mar. 19.	1 Sprague print	44	17	7 48	
					7 48
Mar. 19th.	1 crash	13	14	1 89	
	1 diaper			1 85	
					3 74
					$955 96

Exhibit B referred to by the witness' Benj. C. Hardenbrook, John D. Wilson—Henry H. Rice, comm'r.

289 No. 6767. Sales 365. Folio 331.

NEW YORK, *March 2nd*, 1867.

M. E. Leipziger & Co., 83 *Reade st., city, bought of Alexander T. Stewart & Co., Broadway, Chambers, and Reade streets.*

(Terms: 90 days, 3% off, payable in money bankable in New York City.)

	1 p'c Bedford, ¾ cass	36	75	27	37		
	1 " ¾ F'cy " (asis)	26	75	9	69		
	1 " " "	21	125	26	25		
	14 " " "	387¾	100	387	75		
	2 " ¾ "	50½	200	100	75		
	" D. & F. cass (asis)	122½	200	244	75		
						806	56
Mar. 19.	1 sco. diaper			2	80		
	1 " "			2	10		
						4	90
						811	46

Exhibit C, referred to by the witness' Benj. C Hardenbrook, John D. Wilson.—Henry H. Rice, comm'r.

290 *Exhibit D, rejerred to by witness.*

MEYER SONNEBORN, MANSFIELD, O.

MARCH 19, 1867.—States he was the Co. of E. Leipziger & Co. 1½ years; previously some years at Galveston as M. S., and same in San Antonio. Commenced present business last fall with capital of $16,000, which was the amount of his interest in concern of E. Leipziger & Co. Dissolved in April, '66. They paid him by buying $16,000 of goods in their own name for his Mansfield business, and for which they paid. Took stock in Feb., '67.

Stock	$18,700
Book acc's	0
Liabilities for money	0
Merchandise	3,000
	$15,000

Had $375 in bank; making capital, $16,100.

291 Sold about $2,500 last season, but cleared nothing; came out about whole. Has reduced stock to about $17,000, and owe less than $1,000. Insured $20,000. Will buy this time 4 to $5,000. Is a brother of Sonneborn of Sonneborn & Co., Church s't. Never failed to pay 100c. Was worth $25,000 clear when he came from Texas, all of which he put into Leipziger & Co. Put in $25,000; lost $9,000 in 18 months, and took out $16,000, which is all he is worth now. Never bought in own name, except of H. B. Claflin & Co. and Sonneborn & Co., to whom he refers.

Exhibit D referred to by witness, Benj. C. Hardenbrook.—Henry H. Rice, comm'r

E.

Edward Leipziger & Co., 83 Reade st., city, M. Sonneborn the Co.
Aug. 7, 1865. L. states commenced business in June, 1865.

292 Capital cash paid in $75,000.00; L. ⅔ds; S. ⅓d; all their own, and no borrowed money or liabilities of any kind to banks or individuals. Have no endorsements. Were previously in business at San Antonio, Texas, for five years; first E. L., & then E. L. & Co. Never failed. Always paid 100c. All debts due by them North were paid in full. Liabilities to-day for m'd'ze, $15,000. E. L. was one year in Washington City in business prior to going to Texas.

Refers to Sonneborn & Co., Spent, Tillinghast & Co., S. B. Chittenden & Co., Irvin, Marsh & Co., Wicks, Smith & Co.

Net 30 days and 90 days, 3% off. Mod. line.

Aug. 9, 1865.

Exhibit E referred to by witness, John D. Wilson.—Henry H. Rice, commissioner.

EXHIBIT F.

Edward Leipziger & Co., 83 Reade st., city.—Wilson.—Ap'l 6, '67, L. notifies us that the partnership is dissolved, and all liabilities will be paid by May 1, 1867.

Exhibit F referred to by witnesses, Benj. C. Hardenbrook, John D. Wilson.—Henry H. Rice, comm'r.

293 I, Henry H. Rice, the commissioner in said commission named, do hereby certify that the evidence of the witnesses, Benjamin C. Hardenbrook and John D. Wilson, was taken down under oath, and subscribed by them in my presence, on the 27th day of October, 1870, at the city of New York, in the county and State of New York, and that I have personal knowledge of said witnesses.

Witness my hand and seal.

[SEAL.] HENRY H. RICE,
Commissioner.

Fees, $20, paid by plaintiffs.

HENRY H. RICE, *Comm'r.*

The defendants here closed their case.

The plaintiff in rebuttal introduced the depositions of the following-named witnesses, to wit, Henry Cohen, Isaac Prager, Sigman Siligman, Max Gabriel, E. Liepzieger, W. H. Kohn, Abraham Siligman, Jacob Goldsmith, and Max Gabriel, all of which are hereby adopted as a part of this bill of exceptions.

294 *Depositions of Elkin Leipzeiger, S. S. Siligman, Henry Cohen, Isaac Prager.*

THE STATE OF ALABAMA:

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

To Cornelius A. Runkle, greeting:

Know ye that we, having full faith and confidence in your prudence

and competency, have appointed you commissioners, and by these presents do authorize you, or any one or more of you, at such time and place as you may appoint, to call before you and examine Elkan Leipzeiger, Sigman S. Seligman, Henry Cohen, and Isaac Prager as witnesses in the above-stated case now pending and at issue in our circuit court, at Clayton, in Barbour County, of the State aforesaid, on oath to be by you administered, upon interrogatories attached to this commission, to take and certify the deposition of the witnesses, and return the same to our said court, to be holden on the first Monday in November next, at Clayton, under your hand and seals.

Witness my hand this the 13th day of October, A. D. 1870.

A. T. SPENCE, *Clerk.*

Suit pending in the circuit court of Barbour County, Alabama, at Clayton.

A. T. STEWART & CO.)
vs.
MEYER SONNEBORN.)

295 Interrogatories to be propounded to Elkin Leipzeiger, Sigman S. Siligman, Henry Cohen, Isaac Prager, material witnesses for the defendant, and who reside in the city and State of New York.

1. Interrogatory 1st. Do you know the parties to this suit?

2. Interrogatory 2nd. Where do you reside now, and where did you reside in the years 1866 and 1867?

3. Interrogatory 3rd. Do you or any one of you know who composed the firm of E. Leipzeiger & Co. in the years 1866 and 1867? If you do, give the individual names of the persons composing said firm during said years and each part of said years. Do you know anything of defendant Sonneborn being a member of the firm of E. Leipzeiger & Co.? If you do, state when he was a member, and when he withdrew from said firm, if he did withdraw. Tell all about the transaction, giving dates and your means of knowing.

4. Interrogatory 4th. Where did defendant Sonneborn do business after he withdrew from the firm of E. Leipzeiger & Co.?

5. Interrogatory 5th. If all, or any one of you, know any facts or circumstances going to show that any of the plaintiffs, through themselves or their agents or salesmen, knew in 1866, or very early in 1867,
296 that defendant Sonneborn had withdrawn from the firm of E. Leipzeiger & Co., please tell all about it, giving dates particularly; or if you know that defendant in 1866 purchased goods of plaintiffs on his individual account, and to be shipped to his new place of business in Mansfield, Ohio, please tell all about it, and whether plaintiffs or their agents or salesmen knew at that time that defendant had withdrawn from the firm of E. Leipzeiger & Co.

6. Interrogatory 6th. If any of plaintiffs, or any agent or salesmen of plaintiffs, called on any of you in 1866 to know about the standing and responsibility of defendant, and also to know what amount he had withdrawn from the firm of E. Leipzeiger & Co., please tell all about what occurred, giving the dates as near as you can.

7. Interrogatory 7th. Tell anything else you may know going to show that the defendant Sonneborn is not liable for the goods sold by the plaintiffs in 1867 to the firm of E. Leipzeiger & Co.

S. H. DENT,
Def'ts' Att'y.

Plaintiff objects to the following part of fifth interrogatory, to wit, "If you know that defendant in 1866 purchased goods of plaintiffs on his own individual account, and to be shipped to his new place of
297 business, in Mansfield, Ohio, please tell all about it," because it it is leading, and suggests to the witnesses the answer desired, and propounds the annexed cross-interrogatories.

SHORTER & BRO.,
Pl'ffs' Att'ys.

We hereby accept service of the within interrogatories, waive affidavit and copy, and consent for commission to issue instanter to Runkle, 293 Broadway, N. Y., care of A. I. Dittenhoffer.

SHORTER & BRO.,
Pl'ffs' Att'ys.

In circuit court of Barboar County, Alabama. Fall term, 1870.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

Cross-interrogatories to the witness Elkan Leipzeiger.

I. Give the names of the firm of E. Leipzeiger & Co., and state when said firm was formed. When was it dissolved? Were you a member of said firm, and are you the E. Leipzeiger of the firm of E. Leipzeiger & Co.?

II. Did the firm of E. Leipzeiger & Co. carry on their business in the city of New York in the years 1866 and 1867; if not, where did they do business? Did said firm have any dealings with the firm
298 of A. T. Stewart & Co. of New York City, in the years 1866 and 1867; if so, of what nature? Did they purchase any goods of them; if so, how many purchases were made, and when was each one made in each year?

III. Did you not call at plaintiff's place of business in New York City, on or near the 6th day of April, 1867, and inform one John D. Wilson, an agent and salesman of plaintiffs', of the dissolution of the firm of E. Leipzeiger & Co.? Did not said Wilson then and there inform you that plaintiffs had not before heard or known of the dissolution of said firm, and that your report of it was the first and only notice or knowledge of it the plaintiffs had received? Did not said Wilson then and there take down, in your presence and under your observation, a written memorandum of the notice of the dissolution of the firm? Did you not see said Wilson make said written memorandum? Don't you know he did make it? Did you give said notice, on or about said 7th day of April, 1867, or at any other time, to any member of the firm of A. T. Stewart & Co., or to any agent of said firm; if so, to whom, and whom did you give it? Where did you give it?

IV. If you say, in your answers to the direct interrogatories,
299 that any one of the plaintiffs, or any agent of the plaintiffs, called on you in 1866, to learn about the standing and responsibility of defendant Sonneborn, and what amount he had withdrawn from the firm of E. Leipzeiger & Co., give the name of the party, or parties, who applied to you: state at what place the application was made, in New York City or elsewhere: the month and day of the

month, and your means of knowing said party or parties to have been one of the plaintiffs, or an agent of plaintiffs.

SHORTER & BRO.,
Pl'ffs' Att'ys.

Sigman S. Siligman, Henry Cohen, and Isaac Prager are required to answer the following cross-interrogatories:

I. In what business were you engaged in 1866 & 1867, and where were you so engaged? If any person or persons or firm had you in his or their employ, give the name or names of said persons, and state the character of your employment.

In what business are you now engaged, or if in the employ of any person or persons or firm, state their names in full, and give the number and street where you are engaged.

300 II. Are any of you now interested, in any way whatever in the business of Elkan Leipzeiger, or in any business in which said Leipzeiger is interested?

III. Have either one of you seen and conversed with Meyer Sonneborn since the commencement of this suit in respect to your testimony, or has he written to any one of you in respect to what your testimony would be?

IV. Each one of you are required to answer fully and particularly every question asked Elkan Leipzeiger hereinbefore in interrogatory number four (IV). Answer it in full, in all its parts.

SHORTER & BROTHER,
Pl'ffs' Att'ys.

Deposition of witness sworn and examined under and by virtue of a commission issued out of the circuit court of the State of Alabama for Barbour County, in a certain cause therein depending between A. T. Stewart & Co., plaintiffs, and Meyer Sonneborn, defendant.

Deposition of Henry Cohen.

HENRY COHEN, of the city and State of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

301 To the first interrogatory he saith: I know the parties to this suit.

To the second interrogatory he saith: I reside in the city of New York, and resided in the same place in the years 1866 and 1867.

To the third interrogatory he saith: I do. There names were E. Leipzeiger and Meyer Sonneborn, and M. Cohn. In the year 1866, I think near the beginning of the year, or the latter part of that year, but I am sure it was in the year 1866, the said Meyer Sonneborn withdrew from the firm of E. Leipzeiger & Co. The other members bought him out. The other members, E. Leipzeiger and M. Cohn, continued the business for, I think, a year longer. I do know Sonneborn was a member of the firm of E. Leipzeiger & Co. as above stated, and withdrew from said firm, as stated before. My means of knowledge of the transaction are that all the members of the said firm notified me that Sonneborn had withdrawn, and from that time, for six months or more, Sonneborn was out of business. I saw him around during that time doing nothing.

To the fourth interrogatory he saith: After he withdrew he did business in Mansfield, Ohio.

To the fifth interrogatory he saith: I know nothing of the matters inquired of in this interrogatory.

302 To the sixth interrogatory he saith: I do not know anything about the matters enquired of in this interrogatory. No person, to my recollection, ever called on me in reference to said matters.

To the seventh interrogatory he saith: I do not know anything else than I have stated.

HENRY COHEN.

To the first cross interrogatory he saith: In 1866 and 1867 I was engaged in selling merchandise in the city of New York. I was not in the employ of any person, but was doing business for myself. I am now engaged in the same business, the selling of clothes, clothing and woolens, at the same place, No. 116 Church street.

To the second cross-interrogatory he saith: No.

To the third cross interrogatory he saith: I have not had any conversation with Meyer Sonneborn on the subject inquired of, and he has not written to me on that subject.

To the fourth cross-interrogatory he saith: In answer to the fourth cross-interrogatory addres'ed to Elkan Leipzeiger, witness saith, I do — remember that any person ever called on me in reference to the matters inquired of, and I cannot answer further than I have already answered.

HENRY COHEN.

303 I, Cornelius A. Runkle, the commissioner in said commission named, do hereby certify that the evidence of the witness Henry Cohen was taken down under oath and subscribed by him in my presence on the 27th day of October, 1870, at my office in the city, county, and State of New York, and that I have personal knowledge of said witness.

Witness my hand and seal.

[SEAL.] CORNELIUS A. RUNKLE,
Commissioner.

Deposition of Isaac Prager.

Deposition of witness, sworn and examined under and by virtue of a commission issued out of the circuit court of the State of Alabama for Barbour County, in a certain cause therein depending, between A. T. Stewart & Co., plaintiffs, and Meyer Sonneborn, defendant.

ISAAC PRAGER, of the city and State of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I know the plaintiffs by reputation, and have had business transactions with them. I know the defendant personally.

To the second interrogatory he saith: I reside now in the city of New York, and also resided here in the years 1866 and 1867.

To the third interrogatory he saith: The firm was composed of
304 E. Leipzeiger, Mr Cohen, and Meyer Sonneborn, in the first part of the year 1866. Meyer Sonneborn left that concern about October, 1866. In October, 1866, and the early part of that month, Meyer Sonneborn came to me at my place of business, informed me of the dissolution of his copartnership with E. Leipzeiger & Co., and at the same

time told me of his having rented a store in Mansfield, Ohio, for the purpose of conducting there a retail dry goods business, and I sold him a bill of goods and shipped them to Mansfield, Ohio, in October, 1866. The goods I charged to him October 30th, 1866.

To the fourth interrogatory he saith: After he withdrew from E. Leipzeiger & Co. he did business in Mansfield, Ohio.

To the fifth interrogatory he saith: I know nothing of the matters enquired of in this interrogatory.

To the sixth interrogatory he saith: I know nothing of the matters enquired of in this interrogatory.

To the seventh interrogatory he saith: I know that Meyer Sonneborn left the concern of E. Leipzeiger & Co. in or about October, 1866, and went to Mansfield, Ohio, and established himself in business there. I sold him goods, and shipped them to him at Mansfield, Ohio; drew on him for payments through the bank at that place, and received
305 payments from him there through the bank. I also sent him letters in the fall of 1866, and during the year 1867 addressed to him at Mansfield, Ohio, and I received letters in reply to the same from him, dated and post-marked at Mansfield, Ohio. I did business with Meyer Sonneborn at Mansfield, Ohio, by selling goods to him and receiving payments from him for about two years subsequent to the month of October, 1866.

ISAAC PRAGER.

To the first cross interrogatory he saith: In 1866 and 1867 I was engaged in the dry-goods jobbing business in the city of New York. I began that business in September, 1866. I was not in the employ of any person. I am now engaged in the manufacture of skirts. I am not in the employ of any person. My business is carried on under the name of Wallstein & Prager, No. 189 Church street.

To the second cross-interrogatory he saith, no.

To the third cross-interrogatory he saith: yes, I have conversed with him on that subject. He has not written to me on the subject.

To the fourth cross interrogatory he saith: I know nothing of the matters enquired of in the fourth cross-interrogatory, addressed to Elkan Leipzeiger, and which I am required to answer.

ISAAC PRAGER.

306 I, Cornelius A. Runkle, the commissioner in said commission named, do hereby certify that the evidence of the witness, Isaac Prager, was taken down under oath, and subscribed by him in my presence on the 31st day of October, 1870, at my office in the city of New York, in the county of New York, and State of New York, and that I have personal knowledge of said witness.

Witness my hand and seal.

[SEAL.] CORNELIUS A. RUNKLE,
Commissioner.

Deposition of S. S. Seligman.

Deposition of witness sworn and examined, under and by virtue of a commission issued out of the circuit court of the State of Alabama for Barbour County, in a certain cause therein depending between A. T. Stewart & Co., plaintiffs, and Meyer Sonneborn, defendant.

SIGMAN S. SELIGMAN, of the city and State of New York, being duly

sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say, as follows:

To the first interrogatory he saith: Yes.

To the second interrogatory he saith: I reside in the city of New York, and I so resided in 1866 and 1867.

307 To the third interrogatory he saith: In 1866, the first part of the year, the firm was composed of E. Leipzeiger, Meyer Sonneborn, and M. Cohen. Meyer Sonneborn withdrew about October, 1866, from the concern of E. Leipzeiger & Co. I know Meyer Sonneborn opened a business in Mansfield, Ohio, about the last of the year 1866. We sold goods to him, and shipped them to him at that place in the fall of 1866, or thereabouts. We addressed letters to him at Mansfield, Ohio, in the fall of 1866, and received replies to the same, dated and post-marked at that place, in the fall of 1866.

To the fourth interrogatory he saith: At Mansfield, Ohio.

To the fifth interrogatory he saith: I know nothing about the matters inquired of in this interrogatory.

To the sixth interrogatory he saith: I know nothing about the matters inquired of in this interrogatory.

To the seventh interrogatory he saith: I do not know anything more than I have stated, that Meyer Sonneborn was not a member of the firm of E. Leipzeiger & Co. in 1867.

308 To the first cross-interrogatory he saith: In 1866 & 1867 I was engaged in dealing in woolen goods in the city of New York. I was not employed by any one. I am now engaged in the same business as in 1866 & 1867, at No. 116 Church street. I am not in the employ of any person.

To the second cross interrogatory he saith: No: I am not.

To the third cross-interrogatory he saith: No; I knew nothing of the suit till called on to give my deposition.

To the fourth cross-interrogatory he saith: I know nothing about the matters inquired of in this interrogatory.

S. I. SILIGMAN.

I, Cornelius A. Runkle, the commissioner in said commission named, do hereby certify that the evidence of the witness Sigman S. Siligman was taken down under oath, and subscribed by him in my presence, on the first day of November, 1870, at my office in the city, county, and State of New York, and that I have personal knowledge of said witness.

Witness my hand and seal.

[SEAL.] CORNELIUS A. RUNKLE,
Commissioner.

Fees, $30.00; disbursements, .50—$30.50.

309 I, Cornelius A. Runkle, the commissioner named in the foregoing commission, do hereby certify that the deposition of Elkan Leipzeiger, one of the witnesses named in said commission, could not be taken, as the said Leipzeiger is not within the State of New York, and has not been since the receipt of said commission by me.

[SEAL.] CORNELIUS A. RUNKLE,
Commissioner.

310 *Commission.*

In the circuit court.

THE STATE OF ALABAMA,
Barbour County:

A. T. STEWART & CO., PLAINTIFFS,
vs.
MEYER SONNEBORN, DEFENDANT.

To A. Vangueder:

Know ye that we, having full faith and confidence in your prudence and competency, have appointed you commissioners, and by these presents do authorize you, or any one or more of you, at such time and place as you may appoint, to call before you and examine Elkin Leipzeiger as witness in the above-stated case, now pending and at issue in our circuit court, at Clayton, in the county of Barbour, of the State aforesaid, on oath, to be by you administered, upon interrogatories attached to this commission; and to take and certify the deposition of the witness, and return the same to our said court, to be holden on the 2nd Monday in December next, at Clayton, under your hand and seal.

Witness, A. T. Spence, clerk of our said court, at office this 1st day of July, A. D. 1871.

[L. S.] A. T. SPENCE, *Clerk.*

Issued the 1st day of July, A. D. 1871.

A. T. SPENCE, *Clerk.*

311 *Deposition of Elkim Leipzeiger.*

Suit pending in the circuit court of Barbour County, Alabama.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

Interrogatories to be propounded to Elkin Leipzeiger, a resident of Springfield, Missouri, and a material witness for the defendant.

1. Interrogatory 1st. Do you know the parties to this suit?

2. Interrogatory 2nd. Do you know who composed the firm of E. Leipzeiger & Co., in the city of New York, in the year 1866, and in the year 1867? If you do, answer and tell.

3. Interrogatory 3rd. Did defendant Sonneborn ever belong to said firm of E. Leipzeiger & Co., or was he ever a member of said firm? If so, tell when he became connected with said firm, and when he dissolved and withdrew from said firm; give the dates particularly.

4. Interrogatory 4th. If defendant Sonneborn went to Mansfield, Ohio, tell when he went there, and what business he engaged in there; tell where said Sonneborn was living in the latter part of 1866, and in the early part of 1867, and what business he was engaged in.

312 5. Interrogatory 5th. State any fact or circumstance within your knowledge, going to show that plaintiffs, A. T. Stewart & Co., or their agent or attorney or clerk, had any knowledge of the withdrawal of defendant Sonneborn from the firm of E. Leipzeiger & Co., prior to the

year 1867; if you ever communicated the facts of the withdrawal of said Sonneborn from said firm of E. Leipzeiger & Co. to the plaintiffs, or any agent of theirs, tell where you did it, and all about the circumstance.

6. Interrogatory 6th. If plaintiffs or any agent of theirs ever called on you in August or September, 1866, to inquire about the solvency and standing of defendant Sonneborn, tell what occurred and what information you gave plaintiffs or their agents (if you gave any), about the withdrawal of said Sonneborn from the firm of E. Leipzeiger & Co., and about his solvency, &c.; tell all that occurred in reference to this matter, and when it occurred.

7. Interrogatory 7th. State any facts in your knowledge, not previously stated, that will benefit the defendant.

S. H. DENT,
Att'y for Def't.

Cross-interrogatories.

1st. Are you related by consanguinity or affinity with Meyer Sonneborn? If so, how?

313 2nd. If you say, in your answers to the direct questions, that you gave notice of the withdrawal of Meyer Sonneborn from the firm of E. Liepzeiger & Co., to the plaintiffs, or either of them, or any agent of theirs, give the name of the party to whom this notice was given, when given, and how do you know he was a member of the firm or an agent of the firm? What kind of notice did you give?

SHORTER & BRO.,
Pl'ffs' Att'ys.

Service accepted, copy and affidavit waived, and we consent for commission to issue instanter.

SHORTER & BRO.,
Att'ys for Pl'ffs.

We consent that the answers of the witness named in within interrogatory may be taken at any time prior to the next term of the circuit court of Barbour County, Ala.

July 1st, 1871.

SHORTER & BRO.,
Att'ys for Pl'ffs.

In circuit court at Clayton, Barbour County, Alabama, spring term, 1871.

A. T. STEWART & CO., PLAINTIFF,
vs.
MEYER SONNEBORN, DEFENDANT.

Deposition of Elkin Leipzeiger, witness, sworn and examined the 7th day of August, 1871, between the hours of 8 o'clock a. m. and 6 o'clock p. m., at the office of A. Vangueder, notary public within and for
314 the county of Greene, in the State of Missouri, in the city of Springfield, in the county of Greene aforesaid, under and by virtue of a commission issued out of the circuit court at Clayton, in the county of Barbour, in the State of Alabama, in a certain cause therein pending, wherein A. T. Stewart & Co. are plaintiffs, and Meyer Sonneborn is defendant.

ELKIN LEIPZEIGER, of Springfield, Missouri, of lawful age, being

duly sworn on the part of the defendant, doth depose and say as follows:

To the first interrogatory he saith: I am acquainted with the plaintiffs and the defendants.

To the second interrogatory he saith: The firm of E. Leipzeiger & Co., in the city of New York, consisted, in the year 1866, of E. Leipzeiger and Meyer Sonneborn, that is to say, until the 16th day of April, 1866, on said day Meyer Sonneborn retiring and W'm Cohen entering into the firm as a partner, and remained so during the year 1867, and until said firm dissolved.

To the third interrogatory he saith: Defendant, Meyer Sonneborn, belonged to the firm of E. Leipzeiger & Co., and was a member of said firm from May, 1865, until the 16th day of April, 1866.

To the fourth interrogatory he saith: Defendant, Meyer Sonneborn, went to Mansfield, Ohio, in August or September, 1866, where he
315 engaged in the dry goods business. He was living at Mansfield, Ohio, in the latter part of 1866 and in the early part of 1867, and was engaged in the dry goods business, as aforesaid.

To the fifth interrogatory he saith: Some time during the month of August, 1866, a young gentleman entered the business-house of E. Leipzeiger & Co., in the city of New York, and made enquiries regarding Meyer Sonneborn, the defendant. I ask' the gentleman what house he represented, to which he replied that he represented the house of A. T. Stewart & Co., of said city. He wanted to know if Meyer Sonneborn was a member of the firm of E. Leipzeiger & Co. I told him Meyer Sonneborn had withdrawn from the firm some time in April of that year, and drawn out a considerable amount of money, about $10,000. We owed but very little at the time of M'r Sonneborn's withdrawal from the firm, and though' it unnecessary to publish the fact of our dissolution. The only time that I remember that the plaintiffs, A. T. Stewart & Co., were informed of said dissolution was at the time mentioned here, through their agent, whose name I do not know, but who was the proper agent of said plaintiffs, as I am positive. Said agent did also, at the same time, inquire of me regarding the financial ability of said Sonneborn, and asked such further questions and made such
316 further enquiries as it is usual in mercantile circles, to ascertain a person's standing.

To the sixth interrogatory he saith, that plaintiff, by his agent, called on me some time in August, 1866, about the time Sonneborn was buying his fall stock for his house in Mansfield, Ohio, and that I gave him the information above stated, regarding the solvency and standing of defendant Sonneborn. All I remember of said occurrence, I have fully stated in answers to the fifth interrogatory.

To the seventh interrogatory he saith: He has nothing further to state in the premises.

Cross-interrogatories:

To the first cross-interrogatory he saith: Defendant, Meyer Sonneborn, is my brother-in-law, I being married to his sister.

To the second cross interrogatory he saith: As I already stated, I am not acquainted with the name of plaintiff's agent who was at the business house of E. Leipzeiger & Co., as before stated, but from his representations and from his enquiries regarding the solvency of said Sonneborn, who was at that time purchasing a stock of goods, I could not think otherwise than that the said person was the authorized agent of
317 said A. T. Stewart & Co. The only notice I gave to A. T. Stewart

& Co. was the notice given to their agent as stated. It is not customary to enquire of an agent's name, but ask of him the name of the firm represented by him.

E. LEIPZEIGER.

Sworn to & subscribed before me, this 7th day of August, 1871.
[SEAL.] A. VANGENDER,
Notary Public.

STATE OF MISSOURI,
County of Greene:

I, A. Vangender, a notary public, within and for the county of Greene, do certify that the foregoing examination and cross-examination of E. Leipzeiger, of Springfield, Missouri, was by me reduced to writing, subscribed and sworn to this seventh day of August, 1871, between the hours of 8 o'clock a. m. and 6 o'clock p. m. of said day, at my office in Springfield, Missouri, before me, said notary public.

And I further certfy that the person examined is personally known to me, and is the identical person named in the commission; and I also certify that the notary public is entitled to three dollars and fifteen cents for taking this deposition, which amount has been paid by defendant.

Given under my hand and official seal at office, this 7th day of August, A. D. 1871.
[SEAL.] A. VANGENDER,
Notary Public, Greene Co., Mo.

318 *Depositions of A. Seligman, L. S. Mack, Jacques Goldsmith.*

THE STATE OF ALABAMA:

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

To Cornelius Runkle, greeting:

Know ye that we, having full faith and confidence in your prudence and competency, have appointed you commissioners, and by these presents do authorize you or any one or more of you, at such time and place as you may appoint, to call before you and examine Abraham Seligman, Lewis S. Mack and Jaques Goldsmith as witnesses in the above stated case now pending and at issue in our circuit court at Clayton, in Barbour County of the State aforesaid, on oath to be by you administered, upon interrogatories attached to this commission, to take and certify the deposition of the witness and return the same to our said court, to be holden on the first Monday in November, instant, at Clayton, under your hands and seals.

Witness my hand this 7th day of Nov., A. D. 1870.
A. T. SPENCE, *Clerk.*

Suit in the circuit court of Barbour County, Alabama. Fall term, 1870.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

319 Interrogatories to be propounded to Jaques Goldsmith, Lewis S. Mack, and Abraham Seligman, material witnesses for defendant, and who reside in the city of New York.

1. Interrogatory 1st. Do you know the parties to the above stated suit?

2. Interrogatory 2nd. Do you know when defendant Sonneborn withdrew from the firm of E. Leipziger & Co.? If you do, tell when it occur'ed; where did he do business after he withdrew from the firm of E. Leipziger & Co.? Do you know when he purchased his goods after he left said firm? If you do, tell from what business houses as far as you know.

3. Interrogatory 3rd. Was the fact that defendant had withdrawn from the firm of E. Leipziger & Co. generally known in the city of New York, where plaintiffs were engaged in business? State any facts or circumstances within your knowledge going to show that plaintiffs, or any agent, clerk, or salesman of theirs, knew that defendant had withdrawn from the firm of E. Leipziger & Co. prior to January, A. D. 1876.

4. Interrogatory 4th. State any facts or circumstances within
320 your knowledge not previously stated that will benefit the defendant.

S. H. DENT,
Att'y for Def't.

The plaintiffs object to the 2nd interrogatory because it seeks to elicit facts irrelevant to the issue; objects to the answers thereto; objects to the first question in 3rd interrogatory and answers thereto for same reason, and propounds the following cross-interrogatories:

Tell who was present when you or any one else notified plaintiffs of Meyer Sonneborn's withdrawal from the firm of E. Leipziger & Co. If any notice was given to plaintiffs, or to any agent of plaintiffs, of the dissolution of the firm of E. Leipziger & Co., state who gave the notice, the character or kind of notice given, and to whom given, where and when? What is the name of the party to whom you say notice was given? Was he in plaintiffs' employ; if so, how do you know he was? In what capacity was he employed? Who was present when the notice was given?

2nd cross-interrogatory. Did not E. Leipziger & Co. carry on their business in Reade street in New York? If so, how far is their place of business from the house of A. T. Stewart & Co.? Did you or either of you give notice of dissolution of E. Leipziger & Co. to A. T. Stewart & Co., or any agent of theirs? If so, tell all about it, and who was present, when, and where?

SHORTER & BROTHER,
Pl'ffs' Att'ys.

321 *Deposition of Abraham Siligman.*

Deposition of witness sworn and examined under and by virtue of a com'ission issued out of the circuit court of the State of Alabama for Barbour County, in a certain cause therein depending between A. T. Stewart & Co., plaintiffs, and Meyer Sonneborn, defendant.

ABRAHAM SELIGMAN, of the city, county, and State of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I know the plaintiffs by reputation. I know the defendant personally.

To the second interrogatory he saith: The deft. Sonneborn withdrew from the firm of E. Leipziger & Co. in April, 1866. After that he did

business in Mansfield, Ohio. After he left the firm of Leipziger & Co. he bought some *peice*-goods of Sonneborn & Co., amounting to about $1,700; he also bought goods of H. B. Claflin & Co., & others whose names I do not now remember. These goods were purchased about August, 1866.

To the third interrogatory he saith: The fact that def't Sonneborn had withdrawn from the firm of E. Leipziger & Co. was generally known in the city of New York at the time of such withdrawal. I cannot state any other facts of my own knowledge going to show that the plaintiffs, their agents, clerks, or salesmen knew of such withdrawal.

4th. To the fourth interrogatory he saith: I cannot say anything further.

CORNELIUS A. RUNKLE,
Commissioner.

To the first cross-interrogatory he saith: I know nothing about the matters inquired of in this interrogatory.

To the second cross-interrogatory he saith: E. Leipziger & Co.
322 do carry on their business in Reade street, about one block from the house of A. T. Stewart & Co. I know of nothing further in regard to the matters inquired of in this interrogatory.

ABRAHAM SELIGMAN.

I, Cornelius A. Runkle, the commissioner in said commission named, do hereby certify that the evidence of the witness Abraham Seligman, was taken down under oath, and subscribed by him in my presence on the sixteenth day of November, 1870, at my office in the city, county, and State of New York, and that I have personal knowledge of the identity of said witness.

Witness my hand and seal.

CORNELIUS A. RUNKLE,
Commissioner.

Deposition of Jacques Goldsmith.

Deposition of witness sworn and examined under and by virtue of a commission issued out of the circuit court of the State of Alabama for Barbour County, in a certain cause therein depending between A. T. Stewart & Co., plaintiffs, and Meyer Sonneborn, defendant.

JACQUES GOLDSMITH, of the city, county, & State of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

323 To the first interrogatory he saith: I do not know the plaintiffs personally, but by reputation. I knew the defendant personally.

To the second interrogatory he saith: I do. The defendant Sonneborn withdrew from the firm of E. Leipziger & Co. about April, 1866. After that time he was for several months out of business; then he went to Mansfield, Ohio, and started business there about August, 1866. After Sonneborn left the firm of E. Leipziger & Co. he bought goods of Sonneborn & Co., of H. B. Claflin & Co., I think, and from Schloss Bro's, and others whose names I do not remember.

To the third interrogatory he saith: The fact that the defendant Sonneborn had withdrawn from the firm of E. Leipziger & Co. was gen-

erally known in New York City in the summer of 1866. I do not know of any other fact or circumstance, of my own knowledge, going to show that pl'ff's or their agents, clerks, or salesmen knew of such withdrawal before Jan'y, 1867.

324 To the fourth interrogatory he saith: In August, 1866, Meyer Sonneborn bought a bill of goods, amounting to about $1,700, of the firm of Sonneborn & Co. Part of that bill of goods I sold to Meyer Sonneborn myself. They were shipped to Mansfield, Ohio. These were the first goods defendant, Sonneborn, bought to my knowledge after he separated from E. Leipziger & Co. I was then a clerk and salesman with Sonneborn & Co.

CORNELIUS A. RUNKLE,
Commissioner.

To the first cross-interrogatory he saith: I know nothing of the matters inquired of in this interrogatory.

To the second cross-interrogatory he saith: E. Leipziger & Co. did carry on their business in Reade street, New York, about one block from the store of A. T. Stewart & Co. I know nothing more in regard to

325 the matters inquired of in this interrogatory.

JACQUES GOLDSMITH.

I, Cornelius A. Runkle, the commissioner in said commission named, do hereby certify that the evidence of the witness Jacques Goldsmith was taken down under oath, and subscribed by him in my presence, on the sixteenth day of November, 1870, at my office in the city of New York, county of New York, and State of New York, and that I have personal knowledge of said witness.

Witness my hand and seal.

[SEAL.] CORNELIUS A. RUNKLE,
Commissioner.

I, Cornelius A. Runkle, the commissioner in said commission named, do hereby further certify that I could not and did not take the deposition of Lewis S. Mack, the other witness named in said commission, as said witness is absent from the State of New York and in the State of Ohio.

CORNELIUS A. RUNKLE,
Commissioner.

Fees, $10; fees, $10; disbursements, .25—$20.25.

326 *Deposition of W'm K. Cohen.*

In the circuit court.

THE STATE OF ALABAMA,
Barbour County:

A. T. STEWART & CO., PLAINTIFFS,
vs.
MEYER SONNEBORN, DEFENDANT.

To D. G. Gordon, esq., of Hartford, Conn.:

Know ye that we, having full faith and confidence in your prudence and competency, have appointed you commissioners, and by these pre-

sents do authorize you, or any one or more of you, at such time and place as you may appoint, to call before you and examine William K. Cohen as witness in the above-stated case, now pending and at issue in our circuit court at Clayton, in the county of Barbour, of the State aforesaid, on oath to be by you administered, upon interrogatories attached to this commission, and to take and certify the deposition of the witness and return the same to our said court, to be holden on the 2nd Monday in November next, at Clayton, under your hand and seal.

Witness A. T. Spence, clerk of our said court, at office, this 22nd day September, A. D. 1873.

A. T. SPENCE, *Clerk.*

Issued the 22nd day of Sept., A. D. 1873.

A. T. SPENCE, *Clk.*

Suit in the circuit court of Barbour County, Alabama, fall term, 1873.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

Interrogatories to be propounded to and answered by William K.
327 Cohen, a resident of the city of Hartford, in the State of Connecticut, who resides out of the State of Alabama, and who is a material witness for the defendant in the above-stated case.

1. Interrogatory 1st. Do you know the parties to the above-stated case?

2. Interrogatory 2nd. Where are you living or residing now, and where were you residing during the years 1866 and 1867?

3. Interrogatory 3rd. What business were you engaged in during the year' 1866 and 1867, and with whom were you engaged in said business? Were you in partnership with any one during the year' 1866 or 1867? If so, with whom and where did you form said partnership?

4. Interrogatory 4th. If you answer that you were in partnership with one Elkin Leipziger, please answer and state when you entered into partnership with him, whether any other persons or person was a member of or interested in said partnership; if so, who. Do you know whether defendant was or had been a member of said partner-
328 ship? If so, when? What was the style of said partnership, if there was any? Did defendant withdraw from said partnership? If so, when? Please answer and tell all about the defendant's connection with said partnership, & when he withdrew if he did withdraw, and all about it.

5. Interrogatory 5th. If you answer that defendant withdrew from the firm of E. Leipziger & Co., please state whether or not any notice was given to the previous customers of said firm of said withdrawal. Please state, if you know, whether plaintiffs were notified of such withdrawal; & if they were, when and how. Answer particularly, and state all about whether notice was given the plaintiffs of the withdrawal of defendant from the firm of E. Leipziger & Co., when said notice was given, by whom and how given.

6. Interrogatory 6th. Was the fact of the withdrawal of defendant from said firm generally known in New York at the time of said withdrawal and prior to January 1st, 1867? Where did E. Leipziger & Co. do business; how far from Stewart & Co., the plaintiffs?

7. Interrogatory 7th. State any facts within your knowledge
329 going to show that plaintiffs, Stewart & Co., prior to January, 1867, had knowledge, notice, or information of the withdrawal of defendant from the firm of E. Leipziger & Co. prior to January 1, 1867, and your means of knowledge.

S. H. DENT,
Att'y for Def't.

Mess'rs Shorter & Bro., attorneys of record for plaintiffs, A. T. Stewart & Co., will take notice that the foregoing interrogatories are filed to be answered by William K. Cohen, who resides out of the state of Alabama, and in the city of Hartford, in the State of Connecticut, and that ten days after service hereof a commission will issue to D. G. Gordon, esq., of Hartford, Connecticut, to take and certify the answers of said witness, Cohen, to the foregoing interrogatories.

Sept. 11th, 1873.

S. H. DENT.
Att'y for Def't.

We accept service of the within interrogatories, waive affidavit of materiality & copy, and also accept service of the notice of the name and residence of the witness, and the commissioner to take & certify the answers to said interrogatories.

Sept. 11th, 1873.

SHORTER & BROTHER,
Pl'ff's Att'ys.

330 In the circuit court of Barbour County, Alabama. Fall term, A. D. 1873.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

Cross-interrogatories for William K. Cohen, of Hartford, Conn.

1st cross. Are you related to or connected in any manner with Meyer Sonneborn? If so, how, and tell all about . What is your nationality?

2nd cross. If, in answer to the direct interrogatories, you say you were in partnership at any time in 1866 or 1867 with Elkin Leipziger, state what was your interest in the partnership, when and from whom you purchased said interest, and how much or what you paid for the same. What was the firm name when Meyer Sonneborn was in partnership with Elkin Leipziger? What was the firm name after you went in partnership with Elkin Leipziger? Didn't you buy out the interest of Meyer Sonneborn in the firm of E. Leipziger & Co., and in this way get into partnership with Elkin Leipziger? If so, was not said contract
331 of purchase in writing? If it was, append a literal copy of same to your answers. How much time intervened between the retiring of Meyer Sonneborn from the firm of E. Leipziger & Co. and your going into said firm? Did Elkin Leipziger after the withdrawal of Meyer Sonneborn and before you went into business or partnership with him carry on business in his own name or with any one else? If so, tell all about this.

3rd cross. If you say any notice was given to the previous customers of the firm of E. Leipziger & Co. of the withdrawal of Meyer Sonneborn

from said firm, state how you know it was given. Who told you it was given? Did you see any such notice? If so, was it in printing or in writing? Append a copy of same to your answer. If any such notice was given in printing, or in writing, or verbally, did you give it? If so, to how many previous customers of the firm of E. Leipziger & Co. did you give such notice to? name them all. What year, month, and day of the month, did you give such notice? How came you to be engaged in giving notices of the retirement of Sonneborn? Who told you to do it? If you say you gave such a notice to A. T. Stewart & Co.,
332 state the kind of notice given, the precise time it was given, to whom it was given. Name the party by name to whom given. Where was it given? If in the house of A. T. Stewart & Co., name the man to whom given, and state on which floor in said house said notice was given. Who was present at the time of the giving the notice? What was said by the party to whom said notice was given? Was the party to whom said notice was given a member of the firm of A. T. Stewart & Co.? If so, who was he? Were you personally acquainted with him? How did you know him? If he was not a member of the firm of A. T. Stewart & Co., state whether he was a clerk, salesman, book-keeper, porter, messenger, and your means of information as to what position he held in said house.

4th cross. If you say Sonneborn's withdrawal from the firm of E. Leipziger & Co. was generally known in New York City at the time of his withdrawal, or prior to January 1st, 1867, give your means of information, and tell how this fact became so generally known in the city. What was the population of New York City in 1866? Give the reasons with particularity that cause you to believe that Meyer
333 Sonneborn was generally known in so large a city as New York to have retired from the firm of E. Leipziger & Co.

5th cross. Have you ever been examined as a witness in this case before now; if so, when? Have any interrogatories ever heretofore been presented to you for your answers in this cause; if so, when? Did you answer them; if not, why not? How many times has Meyer Sonneborn written to you or talked to you about this case? Has any one else written to you or talked to you about this case, and said what was necessary for defendant to prove; if so, who and where? Did you not write or tell Meyer Sonneborn, since the commencement of this suit, that he could not prove by you that any notice was ever given to A. T. Stewart & Co. of the withdrawal of him, Meyer Sonneborn, from the firm of E. Leipziger & Co.? Didn't you tell him or write this, when he first proposed to examine you as a witness in his behalf in this case? Have you never made this statement to any one else; if so, when, and to whom? Is Meyer Sonneborn in New York now? Have you not seen him in New York City during the present summer? Didn't he see you and talk to you about this case this summer? Didn't he tell you what he wanted to prove by you? If you have not seen him and talked
334 with him in New York during present or past summer, did you see him and talk with Hartford, Connecticut? Where and when did you last see him, and talk with him? Who was present at the time?

6th cross. Where have you been for the whole of the past twelve months? Have you, within the time enquired of, been beyond the jurisdiction of the United States of America; if so, when and where did you go, and how long were you absent? When did you return to the United States? You are required to answer all the cross-interrogatories with care and particularity, and to state whether you have had any

agreement or understanding of any kind with Meyer Sonneborn, or any one else, as to who is to act as commissioner to certify to your answers to the direct inter'ogatories propounded to you in this case; if so, tell all about it; when this agreement or understanding was made or had, who with, and who was to act as commissioner.

SHORTER & BROTHER,
Pl'ff's Att'ys.

Suit in the circuit court of Barbour County, Alabama. Fall term, 1873.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

335 Deposition of witness sworn and examined the second day of October, A. D. 1873, at Hartford, in the county of Hartford, State of Connecticut, under and by virtue of a commission issued out of the circuit court, at Clayton, in Barbour County, Alabama, in a certain cause therein pending wherein A. T. Stewart & Co. is plaintiff and Meyer Sonneborn is defendant.

WILLIAM K. COHN, of said Hartford, being duly sworn on the part of the defendant, doth depose and say as follows:

To the first inter'ogatory he saith: I know by reputation the firm of A. T. Stewart & Co., and I know Meyer Sonneborn personally.

To the second inter'ogatory he saith: I am living in Hartford, in the county of Hartford, State of Connecticut; I was residing in New York City during the *the* years 1866 and 1867.

To the third inter'ogatory he saith: I was engaged in the manufacture of shirts, and was dealing in gentlemen's furnishing goods during 1866 & 1867. Up to April, 1866, I was engaged in said business
336 with E. Leipziger and Meyer Sonneborn, the defendant. I was in partnership with E. Leipziger and Meyer Sonneborn up to April, 1866. In April, 1866, Meyer Sonneborn withdrew from the partnership, and E. Leipziger and myself continued the business under the same firm-name of E. Leipziger & Co. I formed the said partnership with Meyer Sonneborn and E. Leipziger, on or about the 1st day of August, A. D. 1865.

To the fourth inter'ogatory he saith: Fully answered under third interrogatory. Elkan Leipziger and Meyer Sonneborn were my partners, and the only partners I had. He was a partner from about the 1st of August, 1865, up to about the 16th of April, 1866. The style of the partnership was E. Leipziger & Co. The defendant withdrew from said partnership about the 16th April, 1866.

To the fifth inter'ogatory he saith: No notice of the withdrawal of the defendant from said partnership was published in the newspapers. I know that some of our customers and friends were verbally notified of said withdrawal, but I cannot name any who were notified. I do not know whether the plaintiff were notified.

337 To the sixth inter'ogatory he saith: I think the fact of said withdrawal was generally known to the friends of the firm previous to January 1st, 1867. We did business at No. 83 Reade s't, corner of Church street, New York City, within one block of A. T. Stewart & Co.

To the seventh inter'ogatory he saith: I cannot answer more fully than already answered in fifth & sixth inter'ogatories.

WILLIAM K. COHN.

To the 1st cross inter'ogatory he saith: I am not related to or connected in any manner with Meyer Sonneborn. I am a German.

To the 2nd cross-inter'ogatory he saith: I was a full partner; had one-third interest in it. I formed the partnership: I did not purchase. The firm-name was E. Leipziger & Co., from the formation to about August, 1867. When Meyer Sonneborn withdrew we paid him what was due him. I had been a partner from the organization of the firm, August, 1865, to the termination of it in April, 1867. I think it was April, 1867.

338 To the third cross-inter'ogatory he saith: I have fully stated all I knew about notice having been given of the withdrawal of Meyer Sonneborn in answer to direct inter'ogatory. I told a number of our customers and friends myself, but I cannot name any of them now. Neither can I give any date of giving such notice.

To the 4th inter'ogatory he saith: I believe the fact of the withdrawal was generally known to the friends of the firm prior to January 1st, 1867. I do not know whether all of them knew it. In 1866 I think the population of New York City was about one million.

To the 5th cross inter'ogatory he saith: I have not been examined in this case as a witness before. No inter'ogatories have ever been presented to me before in this case.

Meyer Sonneborn came to Hartford to see me three or four weeks ago, and this is the only time he has spoken to me about the case. He has never written to me except once to give me the name of his lawyer in Eufaula, Alabama, for the purpose of giving him the name of a commissioner for the State of Alabama in the city of Hartford. No one has written me except M'r Dent, counsel for the defendant, when he

339 sent me the commission, which I handed to the commissioner. He did not tell me what it was necessary to prove. M'r Sonneborn explained to me the nature of his suit, telling me that I knew that he was not longer a partner than April, 1866. I did not write to Meyer Sonneborn, or any one, telling what I could or could not prove. I only told Meyer Sonneborn I would testify all I knew in the case. I have never told any one that I could not prove notice was given to A. T. Stewart & Co. I do not know where Meyer Sonneborn is now. I have not seen him in New York during the present summer. He came to Hartford, as I have previously stated, which was the last time I saw him. No one was present when I saw him.

To the 6th cross-inter'ogatory he saith: I have been in Hartford during the whole of the past twelve months. I have not been beyond the jurisdiction of the United States during the time enquired of. I simply sent M'r Dent, defendant's counsel, the name of M'r Gordon as commissioner for Alabama. There was no agreement.

WILLIAM K. COHN.

Examination reduced to writing, subscribed and sworn to, this second day of October, A. D. 1873, before the subscriber, David G. Gordon, and I certify that I have personal knowledge that the person examined is the identical person named in the commission, and I further certify that I am not of counsel or of kin to any of the parties to the cause, or in any manner interested in the result thereof.

Witness my hand and seal this second day of October, 1873.

[SEAL.] DAVID G. GORDON,
Commissioner.

340 *Deposition of Max Gabriel.*

Com'ission to take testimony.

A. T. STEWART & CO., PLAINTIFF,
vs.
MEYERS SONNEBORN, DEFENDANTS.

To I. Albert Englehart, 320 & 322 Broadway, N. Y.:

Know ye that we, having full faith and confidence in your prudence and competency, have appointed you commissioners, and by these presents do authorize you, or any one or more of you, at such time and place as you may appoint, to call before you and examine Max Gabriel, as witness in the above stated case, now pending and at issue in our circuit court, at Clayton, in the county of Barbour, of the State aforesaid, on oath to be by you administered, upon interrogatories attached to this commission; and to take and certify the deposition of the witness and return the same to our said court, to be holden on the 2nd Monday in November next, at Clayton, under your hand and seal.

Witness A. T. Spence, clerk of our said court, at office, this 18th day of September, A. D. 1873.

[L. S.] A. T. SPENCE, *Clerk.*

Issued the 18th day of September, A. D. 1873.

Suit in the circuit court of Alabama for Barbour County, fall term, 1873.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

Interrogatories to be propounded to and answered by Max Ga-
341 briel, a material witness for the defendant in the above stated case, who resides in the city of New York, State of New York, and whose place of business is No. 205 Pearl street.

1. Interrogatory 1st. Do you know the parties to the above stated case?

2. Interrogatory 2nd. Where are you now residing and doing business? Where were you doing business in the years 1866 and 1867, and with whom and what kind of business?

3. Interrogatory 3rd. If in answer to the second interrogatory you state that you were engaged in the employ of E. Leipziger & Co., in 1866 and 1867, please answer who composed said firm in 1866, and if there was any change in the membership of that firm during said time, please state what change it was, when it was made and all about it. If any person or persons withdrew from or were added to said firm during said time, 1866 or 1867, please answer who withdrew & when, & who were added & when, and how you know the facts to which you testify?

4. Interrogatory 4th. If you answer that any person or persons withdrew from the firm of E. Leipziger & Co., during the year 1866 or at any other time, please state whether the plaintiffs had notice or information of the said change in said firm, & what kind of notice was given, and when said notice, if any, was given. How long after the change
342 occurred before said notice was given? Tell all about it.

5. Interrogatory 5th. Please state any facts within your knowl-

edge tending to show that the plaintiffs, A. T. Stewart & Co., previous to January 1st, 1867, had notice or knowledge of the withdrawal of defendant from the firm of E. Leipziger & Co. prior to that time. State whether or not it was generally known in New York City before January 1st, 1867, that defendant, Mr. Sonneborn, had withdrawn from said firm before that time.

S. H. DENT,
Att'y for Def't.

The plaintiffs' attorneys of record, Messrs. Shorter & Bro., will take notice that the foregoing interrogatories are filed to be answered by Max Gabriel, a resident of the city and State of New York, and whose place of business is No. 205 Pearl street, and that at the expiration of ten days a commission will issue to I. Albert Englehart, a resident of the city and State of New York, whose office is 320 & 322 Broadway, New York, to take and to certify the depositions of said witness, Max Gabriel.

Sept. 6th, 1873.

S. A. DENT.
Att'y for Def't.

We hereby accept service of the within interrogatories & waive affidavit copy, and also accept service of the notice of the name & residence of the witness & commissioner.

Sept. 6, 1873.

SHORTER & BROTHER,
Plffs' Att'ys.

343 In this proceeding the plaintiffs demand notice to be given them personally in the city of New York of the place, year, month, day of the month, and hour of the day, when the witness, Max Gabriel, will be examined on these interrogatories, and demand five days' notice of same.

Sept. 8, 1873.

SHORTER & BROTHER,
Plffs' Att'ys.

We demand notice of the time and place of examination of the witness named in these interrogatories.

Sept. 8, 1873.

SHORTER & BROTHER,
Plffs' Att'ys.

In circuit court of Barbour County, Alabama, fall term, 1873.

A. T. STEWART & CO.
vs.
MEYER SONNEBORN.

Cross-interrogatories for Max Gabriel.

1st cross-int'y. Are you related by consanguinity or affinity to defendant, Meyer Sonneborn; if so, how are you related? What is your nationality?

2nd cross-int'y. If, in answer to the fourth direct interrogatory, you say Meyer Sonneborn withdrew from the firm of E. Leipziger & Co., and that notice of his withdrawal from said firm was given to A. T. Stewart & Co., state the year, month, and day of the month he withdrew. Who gave the notice to A. T. Stewart & Co.? What kind of notice was given,

and name the party by name to whom said notice was given, and tell when, the year, month, and day of the month, and the very place in New York City (if given in the city) where said notice was given.

344 If you gave said notice, and gave it in writing or printed, append a copy of same to your answer. If you gave it verbally, tell who directed you to give it, the name of the party you gave it to and who was present at the time. If it was given in the storehouse of plaintiffs, tell whether you gave it to a salesman or a bookkeeper, and on which floor in said house was said notice given? Are you personally acquainted with the parties composing the firm of A. T. Stewart & Co? Did you know them in the year 1866? Name them all. Tell how you knew the name of the party to whom the notice was given, and how long had you known him before the notice was given.

3rd cross int'y. If you say, in answer to the fifth direct interrogatory, it was generally known in New York City that Meyer Sonneborn had withdrawn from the firm of A. T. Stewart & Co. prior to 1st of January, 1867, tell how you knew it was generally known. What was the name and style of the firm when Sonneborn, the defendant in this case, withdrew; who was added to the firm after his withdrawal? What was the new firm-name after Meyer Sonneborn's withdrawal, and the new member or members went in? Where did Meyer Sonneborn go, live, and do business after his withdrawal from the firm of E. Leipziger & Co., and when, what year, month, and day of the month did he go away from New York City? Be careful to answer each and every one

345 of the cross-interrogatories with great particularity.

4th cross-interrogatory. When did the defendant Meyer Sonneborn, talk to you about this case? Name the year and month. Did he tell you what he wanted to prove by you? How many times did he write to you about this case? How many times did he talk to you about it? Didn't he either write to you or talk to you about it soon after the commencement of this suit against him? Didn't he write to you or talk with you about this case again during the present year? If so, when, and tell what he said he wanted to prove by you.

SHORTER & BROTHER.
P'ff's Att'ys.

THE STATE OF ALABAMA.
Barbour County:

A. T. STEWART & CO., PLAINTIFFS.
vs.
MEYER SONNEBORN, DEFENDANT.

In the circuit court.

Deposition of Max Gabriel, sworn and examined the 25th day of September, 1873, at the office of I. Albert Englehart, No. 320 Broad-

346 way, in the city of New York, under & by virtue of a commission issued out of the circuit court at Clayton, in Barbour County, Alabama, in a certain cause therein pending, where A. T. Stewart & Co. are plaintiffs and Meyer Sonneborn is defendant.

M'r H. H. Rice attend' at the examination for plaintiffs as their attorney.

MAX GABRIEL, of New York City, being duly sworn on the part of the defendant, doth depose and say as follows:

To the first direct interrogatory he saith: I know Meyer Sonneborn, and I know the firm of A. T. Stewart & Co.

To the second direct interrogatory he saith: I now reside at No. 40 Ninth street, Hoboken, State of Jersey, & do business at No. 205 Pearl street, New York City, under the firm-name of R. Loementhal & Co. In 1866, I was employed as bookkeeper with E. Leipziger & Co., New York City. I was a few months in 1867 with a person named either Rosenbaum or Rosenthal, as nearly as I can recollect, and after I left him, in 1867, I commenced on my own account a commission business.

To the third direct interrogatory he saith: I was engaged as bookkeeper of E. Leipziger & Co. in 1866 only. The members of the firm of E. Leipziger & Co. up to April or May, 1866, consisted of E. Leipziger, Meyer Sonneborn, and William K. Cohen. In April or May, 1866, M'r Meyer Sonneborn retired from that concern of E. Leipziger & Co. Nobody was added to the firm after Meyer Sonneborn's retirement. I know the fact above stated from the fact that I was there when the above matters took place.

347 To the fourth direct interrogatory he saith: I know that after the retirement of Meyer Sonneborn, in April or May, 1866, a written notice was sent to A. T. Stewart & Co., to the effect that a dissolution of the partnership of E. Leipziger & Co. had taken place, & that Meyer Sonneborn had retired from the firm. To the best of my knowledge the notice was given after the dissolution, but I do not know exactly when, except that it was in April or May, 1866.

To the fifth direct interrogatory he saith: I know that A. T. Stewart & Co. had notice, from the fact that notice had been sent to them of his, Meyer Sonneborn's, retirement. I don't know whether it was generally known or not, except in the trade.

Cross-interrogatories:

To the first cross-interrogatory he saith: I am not related to M'r Meyer Sonneborn in any way. I am a German, and a Prussian in particular.

To the second cross interrogatory:

Adjourned to Sept. 26, 1867, at 3 o'clock in the afternoon.

On the 26th day of September, 1873, M'r H. H. Rice attended for plaintiffs, and said Max Gabriel continued as follows:

To the second cross interrogatory he saith: Meyer Sonneborn withdrew from the firm of E. Leipziger & Co. in the month of May or April, 1866. I cannot state the day when he retired. The notice was given by E. Leipziger & Co. They sent A. T. Stewart & Co. a written notice. The notice was sent to A. T. Stewart & Co. I don't know the person or party or name of the party to whom it was given. I cannot state
348 the particular date. It was in the month of April or May, 1866. The notice was sent to the wholesale department of A. T. Stewart & Co., in the city of New York. I did not personally give or send any notice, but know it was given. I am not personally acquainted with the parties composing the firm of A. T. Stewart & Co. I knew the house of A. T. Stewart & Co. in the year 1866. I knew the parties to whom notice was given by the books of E. Leipziger & Co. I know the plaintiffs as long as I am in America. I knew them nine years before the notice was given to them.

To the third cross-interrogatory he saith: I don't know whether it was generally known except in the trade, that Meyer Sonneborn retired from the firm of E. Leipziger & Co. The style of the firm when Meyer Sonneborn retired was E. Leipziger & Co., & no member was added after

Meyer Sonneborn's withdrawal. I cannot recollect the city Meyer Sonneborn went to after his withdrawal from E. Leipziger & Co. I know that he opened a business in the country. I don't know where Meyer Sonneborn opened business. He went away in the year 1866.

To the fourth cross-interrogatory he saith: About three or four weeks ago Meyer Sonneborn talked to me about this case. He did not tell me anything in particular that he wanted to prove by me, but said that I was bookkeeper for E. Leipziger Co., and that he could not
349 find me before, & that he wanted me to answer some questions that would put to me. He wrote to me only once about this case and once he talked to me about it. I cannot recollect any more times. He did not write or talked to me about this suit soon after it had been commenced against him, and not until about three or four weeks ago; then he said to me that I was bookkeeper there and that I knew all about his retirement.

MAX GABRIEL.

Examination reduced to writing; subscribed and sworn to this 27th day of September, A. D. 1873 (this being the day the examination was adjourned to, & Mr Rice, plaintiffs' attorney, was present during the whole examination, & when the witness signed the deposition) before me, and I certify that the person examined is the identical person named in the commission, and that I am not of kin or of counsel to any of the parties, or in any manner interested in the result of this suit.

Witness my hand and seal this 27th day of September, 1873.

[SEAL.] I. ALBERT ENGLEHART,
Commissioner.

Commissioner's fees, fifteen dollars; witness fees, $1.50.

I. ALBERT ENGLEHART,
Commissioner.

350 The plaintiff here closed, and this being in substance all the evidence, the court charged the jury as follows, to wit:

Charge of the court.

Circuit court of the United States for the middle district of Alabama.

Action for malicious prosecution to have pl'ff declared a bankrupt.

MEYER SONNEBORN
vs.
A. T. STEWART & CO.

Charge of the court.

This action is brought to recover damages sustained by the plaintiff or complainant in consequence of bankruptcy proceedings instituted against him by the defendants on the fifteenth day of August, 1873, and the charge in the complaint is, that the defendants on that day, not having any debt or demand against the complainant, or any other reasonable or probable cause therefor, but wrongfully, maliciously, vexatiously, recklessly, and oppressively, filed their petition against him in the district court of the United States, at Montgomery, wherein they falsely alleged that they were creditors of complainant to the amount of over three thousand dollars, or other large sum, and among other

things also falsely alleged that complainant was insolvent and a bankrupt; and also falsely alleged that he, in view of bankruptcy, had
351 committed an act of bankruptcy, in violation of the bankrupt laws of the United States, and prayed that he might be adjudged a bankrupt, he never having committed or being guilty of any act of bankruptcy; and also for a writ of injunction restraining him from managing or controlling his estate; which injunction was issued and served and obeyed; that the defendants in said petition also prayed for a warrant or writ of seizure to issue from said district court, which writ was also issued, and by virtue thereof the marshal of the district seized and took possession of the entire stock of goods belonging to complainant in the city of Eufaula, on the 16th of August, 1873, and deprived the complainant of the possession thereof, and his store was closed, and his business was suspended, broken up, and destroyed, and his said property was not restored to him until September, 1874, after the proceedings in bankruptcy were dismissed, and that said goods were packed up and greatly injured during the period between the said seizure thereof and restoration to the complainant, to at least two-thirds of their value.

The petition further states that when said bankruptcy proceedings were commenced, an action was pending in the circuit court of Barbour County, brought by the defendants to recover the claim or debt
352 which they alleged that he owed to them, and on which they founded their said proceedings in bankruptcy, and that this suit was afterwards determined against the defendants, and a judgment rendered in favor of the present plaintiff, thus determining that the defendants had no legal claim or demand against him; the petition further alleges that the bankruptcy proceedings were nevertheless continued, but were finally dismissed by said district court.

The complainant claims damages for the injury done to his goods, his business, and his credit as a merchant; and for his loss of time and expenses for lawyers' fees and other charges in defending himself; and also asks for exemplary damages for the wilful and malicious proceedings of the defendants. We instruct the jury that this action is based on the supposed malice of the defendants and want of probable cause for the prosecution of the bankruptcy proceeding complained of.

The plaintiff cannot recover damages against the defendants for the mere wrongful prosecution of the proceedings in bankruptcy; but it must also be shown that they had no probable cause therefor; a want of probable cause is evidence of malice sufficient to sustain the action, and will entitle the plaintiff to recover the actual damage which
353 he has sustained. If the plaintiff desires to recover exemplary damages, or smart-money (as it is called), he must show that the defendants were guilty of actual malice; in other words, that they wilfully instituted and carried on the bankruptcy proceedings when they knew that there was no ground therefor. It is necessary, however, in this case, to qualify the foregoing remarks by the further statement that in order to justify a party in instituting proceedings in bankruptcy he must be a creditor of the alleged bankrupt; there must be a legal debt or demand as the basis of the petitioner's right to proceed.

If the defendants in this case were actual creditors of the plaintiff, they could defend themselves from the charge of maliciously instituting bankruptcy proceedings against the plaintiff by showing that they had probable cause to believe that he had committed an act of bankruptcy. Though the court of bankruptcy decided against them, and dismissed the proceedings, they could still plead that they had such probable

cause for their action. But if they had no legal claim or demand against the complainant, then, whether they had such probable cause or not, they had no right to institute the proceedings. They cannot go back and allege that though they had not a legal debt or claim
354 against him, they thought they had; in other words, that they had probable cause to believe that they had such a demand. Unless they had a debt, they cannot allege probable cause for proceeding in bankruptcy at all.

Their defense cannot stand on two probable causes, one on the top of the other; they had no right to petition that the plaintiff be declared a bankrupt, unless they were his creditors. Their right so to do depended on this fact; and they took on themselves the risk of having such legal demand. Throwing a man into bankruptcy is a serious proceeding, and should not be lightly resorted to, and ought never to be resorted to as a proceeding in terrorem to collect a debt. The petition of the defendants may have been sufficient to give the district court jurisdiction of the bankruptcy proceedings, and to validate a decree of bankruptcy, had one been made; because all the creditors of the bankrupt would have been interested in the decree. If such a decree had been made, the plaintiff could not probably have sustained this action. But as no such decree was made, and as the proceedings on the contrary were dismissed, and as it has been adjudicated by the circuit court of Barbour County, and affirmed by the State supreme court, that the defend-
355 ants never had a legal claim against the plaintiff, and therefore had no right to institute proceedings in bankruptcy against him, the plaintiff is entitled to recover in this action the damages he has sustained by those unlawful proceedings.

The court therefore rules that the defence in this case cannot be sustained by proving that the defendants had probable cause to believe that the plaintiff had committed an act of bankruptcy, but, it being shown by judicial determination that they had no legal debt or claim against the plaintiff, and had therefore no right to institute the bankruptcy proceedings, they are liable for the damages sustained by the plaintiff thereby, and the only question for the jury will be the amount of those damages under the circumstances of the case.

If, however, the plaintiff seeks to recover exemplary damages, he can only do so on the ground of actual malice on the part of the defendants; and on that question the whole conduct and motives of the defendants are open to examination; and if they had probable cause for believing that their claim against him was valid, and that he had committed an act of bankruptcy, they are not chargeable with exemplary damages.

We charge you, therefore, that the plaintiff is entitled to recover
356 his actual damage, or the loss he has actually sustained, at all events; but that you cannot award exemplary damages also against the defendants, unless you believe from the testimony that the defendants were guilty of actual malice.

The damages to be allowed the plaintiff are, first, the actual damage to his goods, which, as he testifies, were finally sold for only $3,650.00; and which, when seized, he swears were worth at invoice, or cost prices, some $13,000 or $14,000. His clerks c'roborate this statement; but two other witnesses, who examined and measured the goods at the time, or shortly after they were seized by the marshal, and who estimated their cost value by the same marks, say that they amounted to only $8,042. This discrepancy is notable. The evidence is to be weighed by the jury, and the true value of the goods when seized is to be estimated by them.

It is to be noted that the latter witnesses, or one of them, think that the goods looked like a lot of auction goods.

Secondly. Damages are to be allowed the plaintiff for the breaking up of his business, and the destruction of his credit. His business was estimated by himself at from thirty-five to forty thousand dollars a year,
and sometimes more, with a gross profit of thirty-three and a
357 third per cent. From this, however, are to be deducted his expenses and the value of his own time. To this you are to add the loss of the rent of his store in Texas, if he lost anything therefrom, though of this he has not offered any proof. The value of his own time is also a fair charge, as he has been obliged to give his attention to the proceedings instituted against him, and has not been able to pursue any business.

Thirdly. His expenses for lawyers' fees in following up and setting aside the proceedings in bankruptcy are also a fair item of charge to be allowed in your estimate of the damages sustained by the plaintiff. It has been claimed that the destruction of the plaintiff's credit is a distinct item of damage: but perhaps this is to be considered as incorporated with his business, and the injury thereto as included in the damage for breaking up said business. The jury will judge whether any separate allowance should be made therefor.

II. On the question of express malice, the whole conduct of the parties and circumstances of the case are to be taken into consideration. If the defendants had reason to believe that he was liable to them for the
debt claimed, and if they had probable cause to believe that he
358 had committed an act of bankruptcy, they cannot be charged with actual malice, and cannot be made to pay exemplary damages.

1. As to reason which the defendants had to believe that they had a legal demand against the complainant, that the defendants had a claim to the amount sued on by them against the firm of E. Leipzeiger & Co. (whoever that firm was when the debt was contracted) is not disputed. The question was whether Sonneborn was a member of that firm, and therefore liable. That he had been a member of that firm in 1865 and 1866 is conceded. The debt was contracted in the early months of 1867, January, February, and March. It is clearly proved that on the 19th of March the defendants were informed that Sonneborn was no longer a member of the firm. The question in dispute between the parties is whether they had been notified before that time of his retirement. They allege that *that* they had not. The complainant alleges that they had. The importance of this question arises from the principle of law that if a man is known to be a member of a firm once he will be deemed to continue a member until notice is given to the contrary. Parties dealing
with the firm and giving them credit have a right to consider all
359 the partners as remaining in the firm until they are notified that any of the partners have retired. Now, Sonneborn contends that he himself gave the notice; but he only gave notice to one of the selling clerks. It may be questioned whether such notice, if given, would be sufficient. It is contended that notice was given by the clerk of the firm of Leipzeiger; also, that a young gentleman called in their store and said he was from Stewart's, and that notice was given to him. The witnesses on the part of the defendants are very positive that no notice was ever received. The somewhat varying and conflicting evidence is before you, and it is for you to judge whether any such notice ever was given. If not given, Sonneborn was liable for the debt. It is for you to judge whether the defendants had reason to believe that it had never been given. If they had, then the fact that they failed to recover a judg-

ment against Sonneborn would not be conclusive evidence that they commenced the proceedings in bankruptcy in bad faith, and with actual malice.

2. As to probable cause for believing that the complainant had committed an act of bankruptcy. The ground for supposing that the
360 complainant had committed an act of bankruptcy was not without evidence to support it. The judgment recovered against him by his brother, on the 12th of June, 1873, in a suit commenced just 30 days previous, a few days after getting a continuance of the defendants' action, without defence, without an effort to get delay, brought by the complainant's own attorney, were circumstances well calculated to induce the belief that the defendants contemplated bankruptcy. The fact that the complainant had issued handbills to advertise the sale of his whole stock of goods was calculated to give intensity to the supposition. Then the fact that the defendants, before proceeding, consulted their counsel, and did not undertake the proceedings in bankruptcy until advised that there was good ground therefor, may also be taken into consideration on this question.

All these circumstances must be taken together and weighed by the jury in deciding the charge that the defendants were governed by actual malice against the complainant. The law as it stood at that time adjudged by the Supreme Court of the United States was almost conclusive against the complainant on the question of his liability to be put into bankruptcy. In the case of Buchanan vs. Smith that court held that
361 when an insolvent debtor suffers a judgment to be obtained against him, whereby the judgment creditor obtains a preference, it is an act of bankruptcy. That was what occur'ed in this case. Sonneborn suffered such a judgment to be recovered against him, large enough to absorb a large part, if not the whole, of his goods, if sold on execution. This was considerable proof of insolvency, as well as an act of bankruptcy. The decision refer'ed to has been modified since, it is true, by a decision in a later case; but it was a sufficient declaration of the law for the time being to protect persons from a charge of actual malice in reposing upon its authority. You have two questions to decide:

1. The actual damages sustained by the complainant, that you will give him a verdict for, at all events.

2. Whether the defendants were guilty of actual malice in prosecuting the proceedings in bankruptcy, and if they were, what exemplary damages should be awarded against them. Such exemplary damages, if any are allowed, are to be added to the actual damages, in the amount of the verdict to be rendered.

The counsel for the defendants requested the court to give the jury the following instructions, which the court refused to do, except as they were contained in and qualified by the preceding charge. And to this refusal the defendants by their counsel excepted, and this their
362 bill of exceptions is signed accordingly. The instructions referred to are the following, that is to say:

If the jury believe, from all the evidence, that Stewart & Co. acted on the advice of counsel in prosecuting their claim against Sonneborn in the circuit court of Barbour, and upon such advice had an honest belief in the validity of their debt, and their right to recover in said action, and in the institution of the bankruptcy proceedings acted likewise on the advice of counsel, and under an honest belief that they were taking and using only such remedies as the law provided for the collection of what they believed to be a bona-fide debt, they having first given a full statement of the facts of the case to counsel, then there was not

such malice in the wrongful use of legal process by them as will entitle the plaintiff to recover in this form of action.

2. That, notwithstanding the prosecution of the proceedings in bankruptcy by Stewart & Co. against Sonneborn may be a wrongful use or abuse of legal process for which Stewart & Co. may be liable on the bond given to obtain a writ of seizure and an injunction in said proceedings, for the actual damage sustained by Sonneborn; yet unless they further believe that Stewart & Co. were actuated by malice
363 in commencing and prosecuting said proceedings, then the plaintiff is not entitled to recover in this form of action.

3. That the jury, if they find for the plaintiff, cannot in estimating the amount of damages, consider the fees of counsel in prosecuting this cause.

All which is certified.

JOSEPH P. BRADLEY, J.

Defendants by their counsel excepted to the following portion of said charge on 4th page of same: "But if they had no legal claim or demand against the complainants, then, whether they had such probable cause or not, they had no right to institute the proceedings. They cannot go back and allege that though they had not a legal debt or claim against him, they thought they had; in other words, that they had probable cause to believe they had such a demand; unless they had a debt they cannot allege probable cause for proceeding in bankruptcy at all. Their defense cannot stand on two (2) probable causes, one on the top of the other."

Defendants by their counsel further excepted to the following portion of said charge on page 5 of same:

"But as no such decree was made, and as the proceedings on the contrary were dismissed, and as it has been adjudicated by the
364 circuit court of Barbour County, and affirmed by the State supreme court, that the defendants never had a legal claim against the plaintiff, and therefore had no right to institute proceedings in bankruptcy against him, the plaintiff is entitled to recover in this action the damages he has sustained by these unlawful proceedings. The court therefore rules that the defence in this case cannot be sustained by proving that the defendants had probable cause to believe that the plaintiff had committed an act of bankruptcy, but, it being shown by judicial determination that they had no legal debt or claim against the plaintiff, and had therefore no right to institute bankruptcy proceedings, they are liable for the damage sustained by the plaintiff thereby, and the only question for the jury will be the amount of the damages under the circumstances of the case."

Defendants by their counsel excepted to the following on 6th page of the written charge of the court:

"We charge you therefore, that the plaintiff is entitled to receive his actual damages, or the loss he has actually sustained, at all events."

Defendants by their counsel excepted to the following portion of the charge of the court on the 7th page of the written charge:

365 "Damages are to be allowed the plaintiff for the breaking up of his business and the destruction of his credit."

Also to following on same page:

"It has been claimed that the destruction of the plaintiff's credit is a distinct item of damage, but perhaps this is to be considered as incorporated with his business and the injury thereto, as included in the

damage for breaking up said business. The jury will judge whether any separate allowance should be made therefor."

Defendant by his counsel excepted to the following portion of written charge of the court on page ten of said charge:

"The actual damages sustained by the complainant you will give him a verdict for at all events."

The defendants then asked the court to give the following charges, which were in writing, to wit:

1. If the jury believe from all the evidence that A. T. Stewart & Co. acted on the advice of counsel in prosecuting their claim against Sonneborn in the circuit court of Barbour County, and upon such advice had an honest belief in the validity of their debt, and their right to recover in said action; and in the institution of the bankruptcy proceed-
366 ings acted likewise on the advice of counsel, and under an honest belief that they were taking and using only such remedies as the law provided for the collection of what they believed to be a bona fide debt, they having first given a full statement of the facts of the case to counsel, then there was not such malice in the wrongful use of legal process by them as will entitle the plaintiff to recover in this form of action.

2d. That notwithstanding the prosecution of the proceedings in bankruptcy by A. T. Stewart & Co. against Sonneborn may be a wrongful use or abuse of legal process, for which A. T. Stewart & Co. may be liable on the bond given to obtain a writ of seizure and an injunction in said proceedings for the actual damage sustained by Sonneborn; yet, unless they further believe from the evidence that A. T. Stewart & Co. were actuated by malice in commencing and prosecuting said proceedings, then the plaintiff is not entitled to recover in this form of action.

3rd. That the jury, if they find for the plaintiff, cannot, in estimating the amount of damages, consider the fees of counsel in prosecuting this cause.

The court refused to give each and all of said three written charges asked for by the defendants; and to such refusal of the court to
367 give each of said charges seperately the defendants excepted, and now tender this their bill of exceptions, and pray that it may be made a part of the record in this case by the signature and seal of the presiding judge, which is accordingly done before the adjournment of the court.

[SEAL.] JOHN BRUCE,
U. S. District Judge, District of Ala.

Filed September 6th, A. D. 1875.

J. W. DIMMICK, *Clk.*

Appeal bond.

THE STATE OF ALABAMA,
Montgomery County:

Know all men by these presents, that we, Alexander T. Stewart, Francis Warden, George Fox, and William Libbey, partners under the firm-name and style of A. T. Stewart & Co., and Patrick H. Pepper, partners under the firm-name and style of P. H. Pepper & Co., are held and firmly bound unto Meyer Sonneborn in the full and just sum of fifty thousand dollars, to be paid to the said Meyer Sonneborn, his heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators,

jointly and severally, by these presents, sealed with our seals, and dated this the 10th day of July, A. D. 1875.

368 Whereas lately, at the June term of the circuit court of the United States for the middle district of Alabama, at Montgomery, in a suit therein depending in said court between the said Meyer Sonneborn as plaintiff and the said A. T. Stewart & Co. as defendants, judgment was rendered against the said A. T. Stewart & Co. for the sum of twenty-one thousand dollars; and the said A. T. Stewart & Co. having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Meyer Sonneborn, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said A. T. Stewart & Co. shall prosecute said writ to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

A. T. STEWART & CO., [SEAL.]
By their att'ys SHORTER & BROTHER.
PATRICK H. PEPPER. [SEAL.]

Witness:
N. W. TRIMBLE.

Personally appeared before me, N. W. Trimble, clerk of the circuit court of the United States for the southern district of Alabama,
369 Patrick H. Pepper, who is known to me personally, and who, being duly sworn, says he is worth the sum of fifty thousand dollars over and above his debts and liabilities and exemptions allowed by the laws of the State of Alabama; that his property consisting of real and personal estate, and is situated in Mobile County and city and State of Alabama.

PATRICK H. PEPPER.

Subscribed & sworn to before me this 10th July, A. D. 1875.
N. W. TRIMBLE, *Clerk*, &c.

The above bond is approved by me this September 3rd, 1875.
JOHN BRUCE,
U. S. District Judge, Dis't Ala.

Filed Sept'r 6th, A. D. 1875.
J. W. DIMMICK, *Clk.*

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the circuit court of the United States for the middle district of Alabama, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea, which is in said circuit court before you, between Meyer Sonneborn and A. T. Stewart & Co., a manifest error hath happened, to the great damage of the said A. T. Stewart & Co., as
370 by his complaint appears, *he* being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if

judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 4th day of October next, in the said Supreme Court to be then and there held, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness honorable Morrison R. Waite, Chief Justice of the Supreme Court, the 5th day of October, in the year of our Lord one thousand eight hundred and seventy-four.

J. W. DIMMICK,
Clerk of the Circuit Court for Middle District of Ala.

Filed in office, June 7th, 1875.

J. W. DIMMICK,
Clerk Circuit Court for Middle Dist. Ala.

371 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Meyer Sonneborn, greeting:

You are hereby cited to be and appear at a Supreme Court of the United States to be holden at Washington on the Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the middle district of Alabama, wherein A. T. Stewart & Co. are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 5th day of October, in the year of our Lord one thousand eight hundred and seventy-four.

J. W. DIMMICK,
Clerk Circuit Court for Middle District of Alabama.

Filed in office Oct. 2nd, A. D. 1875.

J. W. DIMMICK, *Clerk.*

Received in office October 2nd, 1875, and served a copy same day on James L. Pugh, esq., attorney of record for plaintiff in this cause, Meyer Sonneborn.

R. W. HEALY,
U. S. Marshal,
By J. D. WILLIFORD,
Deputy.

372 *Certificate of clerk.*

UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I, J. W. Dimmick, clerk of the circuit court of the United States for the middle district of Alabama, do hereby certify the foregoing pages, numbered from one to three hundred and seventy-one, inclusive, contain a full, true, and complete transcript of the record and proceedings in

the case of Meyer Sonneborn against A. T. Stewart & Co., as the same appears of record and on file in my office as such clerk.

In testimony whereof, I have hereunto set my hand, and caused the seal of said court to be affixed, at Montgomery, in said district, this 9th day of October, A. D. 1875.

[SEAL.] J. W. DIMMICK,

Clerk U. S. Circuit Court for the Middle District of Alabama.

(Indorsement on cover:) No. 355. Alexander T. Stewart, Francis Warden, George Fox, and William Libbey, plaintiffs in error, vs. Meyer Sonneborn. M. Alabama C. C. U. S. Filed 12th February, 1876.

REC. 355——11

Supreme Court

OF THE UNITED STATES.

A. T. STEWART & Co.,
Plaintiffs in Error,
vs.
MEYER SONNEBORN.

No. 355.

In error to the Circuit Court of the United States for the Middle District of Alabama.

STATEMENT.

In October, A. D. 1874, Meyer Sonneborn brought suit, *in action on the case*, against A. T. Stewart & Co., in the Circuit Court of Barbour County, Alabama, for an alleged malicious prosecution in certain bankruptcy proceedings, that A. T. Stewart & Co. had, prior to that time, instituted against him in the District Court of the United States, at Montgomery, Alabama.

The suit was, on motion of defendants, transferred to the Circuit Court of the United States for the Middle District of Alabama; and on trial there had, on 27th May, A. D. 1875, a verdict was rendered in favor of the plaintiff for twenty-one thousand dollars. To reverse this judgment the defendants now prosecute their writ of error to this Court.

The record discloses the fact that A. T. Stewart & Co., on 4th of October, A. D. 1869, commenced an action in assumpsit in the Circuit Court of Barbour County, Alabama, against Meyer Sonneborn, as a member of the late firm of E. Leipseiger & Co., for goods, wares and merchandise, sold to them by said Stewart & Co., in the spring of 1867, amounting to the sum of $2,381.90. The pleadings in that case show that Sonneborn defended the suit upon the ground that he was not a member of the firm of E. Leipseiger & Co., at the time when said goods were purchased. The evidence of Sonneborn and others establish the fact that he had been a member of the firm of E. Leipseiger & Co., at least from July, 1865, to 16th April, 1866, when he claimed to have retired and dissolved his connection with it. The firm of E. Leipseiger & Co. carried on their business in the City of New York, and not far from the storehouse of Stewart & Co. They established a credit with Stewart & Co. in August, 1865, and purchased goods from them every month, from that time down to 19th March, 1867. These purchases were all made in the firm name of E. Leipseiger & Co., and on time. The dominant question on trial of that case was, whether any notice of the dissolution of the firm E. Leipseiger & Co., on 16th April, 1866, by the withdrawal of Meyer Sonneborn, had ever been given to Stewart & Co., before the purchase of the goods in the spring of 1867.

The depositions of James F. Alden, William Libbey, Benjamin C. Hardenbrook, and John D. Wilson, one of them a partner and the others employees of plaintiffs, all show that A. T. Stewart & Co. never had any notice, verbal, printed, or written, of the dissolution of the firm of E. Leipseiger & Co., until 19th of March, 1867, and after the goods bought in the spring of 1867, in the name of E. Leipseiger & Co., were sold on the joint responsibility of E. Leipseiger and Meyer Sonneborn; that the credit would not have been given had they been advised of the retirement of Meyer Sonneborn from the firm.

The house occupied by E. Leipseiger & Co., was located only a few blocks from the house of A. T. Stewart & Co. When Leipseiger and Sonneborn commenced their business in July, 1865, they placed over their door the sign of "E. Leipseiger & Co." No change was made in the sign after the alleged dissolution of the firm of E. Leipseiger & Co.

The testimony of Sonneborn himself, shows that no notice of the dissolution of the firm of E. Leipseiger & Co., was ever published in the newspapers; and the only notice that he claimed to have given to A. T. Stewart & Co. was given to an unknown clerk, on the lower floor of the wholesale house of A. T. Stewart & Co. Upon this question, Sonneborn, on page 65 of the printed Record, says: "that the only notice that he ever gave to A. T. Stewart & Co. of his retirement from the firm of E. Leipseiger & Co. was given to some man in the storehouse of defendants in New York City, whose name was then, and is now, unknown to witness; that this notice was given shortly after he left the firm of E. Leipseiger & Co.; that he went into the storehouse, and on the lower floor, where there were a great many employed in various ways, spoke to a man there who seemed to have some kind of authority there, and told him he was no longer a member of the firm of E. Leipseiger & Co. This was the only notice he ever gave himself to defendants, except the buying of goods in his own name at that house, and having them shipped to him in Mansfield, Ohio, in August, 1866. No notice of the dissolution of the firm by his retirement was published in any newspaper. After he retired in April, 1866, E. Leipseiger and W. H. Kohn continued the business at the same place, and under the same old firm name of E. Leipseiger & Co.; that their store-house was only about two blocks off from the storehouse of defendants in New York. He further testified that in August, 1866, he purchased, in his own name, from defendants $2,000 worth of goods, and had them shipped

to Mansfield, Ohio; that he could not remember whether he paid cash for the goods or not; he inclined to the opinion that they were bought on a credit; that the account was paid by somebody, but by whom he could not remember; that he himself did not pay it, but others did, out of his funds and for him; that either Leipseiger & Co. or Sonneborn & Co. made said payment for him with his funds he had on deposit with one or the other of those houses. He further testified that when he retired from the firm of E. Leipseiger & Co., in April, 1866, he drew out of that firm sixteeen thousand dollars as his share of the assets, partly in goods and partly in money, but could not remember how much of each; that he sold the goods he drew from the firm in New York City to somebody in bulk, that is, he sold them altogether; but who was the purchaser, and what he got for the goods, he could not now remember."

William H. Kohn, who was a member of the firm of E. Leipseiger & Co., testified that "no notice of the withdrawal of Sonneborn from said partnership was published in the newspapers. I know, that some of our customers and friends were verbally notified of said withdrawal, but I cannot name any who were notified. I do not know whether the plaintiffs were notified"—p. 146.

E. Leipseiger, another member of the firm of E. Leipseiger & Co. (p. 138), testified that the only notice he ever gave to A. T. Stewart & Co. of the withdrawal of Sonneborn from the firm of E. Leipseiger & Co. was given to some one, whom he did not know, who called at their house in August, 1866, and represented himself as the agent of A. T. Stewart & Co., and inquired about the solvency of Sonneborn.

The witnesses for the plaintiff testified that they never sent any one to the house of E. Leipseiger & Co. to inquire about the financial condition of Sonneborn. Some other witnesses testified to very slight circumstances, which were

relied upon to prove notice to Stewart & Co. when Sonneborn left the firm of E. Leipseiger & Co.

The testimony of the witnesses for Sonneborn in the State Court was very conflicting, not only on the question of "notice," but even upon the important fact as to who composed the firm of E. Leipseiger & Co. Sonneborn and Kohn swore that Meyer Sonneborn, Elkin Leipseiger and William H. Kohn were all three members of the firm from its organization in 1865 up to April, 1866, when Sonneborn retired. Leipseiger, on the contrary, testified that Kohn never was a member of the firm until after the withdrawal of Sonneborn,—p. 138. On the trial of the case of A. T. Stewart & Co. *vs.* Sonneborn, in Barbour County Circuit Court, in August, 1871, a verdict was rendered for defendant. A motion for new trial was over-ruled. An appeal was taken to the Supreme Court of Alabama, which Court reversed the judgment below and remanded the cause for a new trial.

On 27th day of May, 1873, when the cause was again called for trial in the Circuit Court of Barbour County, Sonneborn filed a special affidavit for a continuance of the cause (see page 109, printed transcript), and moved the Court to continue, which motion was granted.

At the time this affidavit was made and a continuance obtained, a suit against Meyer Sonneborn had been instituted in the City Court of Eufaula, in said County of Barbour and State of Alabama, by his brother Jonas Sonneborn, of the City of New York; and *on 12th June*, 1873, judgment by default was rendered in favor of said Jonas Sonneborn for the sum of $6,944.43. That suit was founded on a judgment rendered in the City and State of New York in favor of said Jonas Sonneborn *vs.* Meyer Sonneborn, on *1st day of May*, 1873. The said New York judgment was obtained on commercial paper, for which Meyer Sonneborn was liable as principal, and the payment of which had been suspended since January, 1868—p. 104–5.

The same attorney, S. H. Dent, who was defending Meyer Sonneborn in the Circuit Court of Barbour County against the suit wherein A. T. Stewart & Co. were plaintiffs, also represented Jonas Sonneborn in his said suit against his brother Meyer Sonneborn, in the City Court of Eufaula—p. 27. Execution was issued from the City Court of Eufaula in favor of Jonas Sonneborn *vs.* Meyer Sonneborn for $6,944.43, on 30th day of June, 1873, and went into the hands of the sheriff of Barbour County on July 3d, 1873—p. 28.

On 1st August, 1873, Meyer Sonneborn posted printed notices in the city of Eufaula, Alabama, where his storehouse and goods were located at that time, announcing that he was offering for sale his entire stock of goods at and below New York costs. After the said judgment in the City Court of Eufaula, in favor of his brother, had been allowed by Meyer Sonneborn to go by default against him, and after the execution thereon had reached the hands of the Sheriff, and said posters or handbills had been published, Eli S. Shorter, the attorney of A. T. Stewart & Co., advised them of these proceedings, and gave the opinion that Meyer Sonneborn had thereby made himself liable to be put into involuntary bankruptcy.—See Shorter's testimony, p. 110.

Under these circumstances, and while the suit of A. T. Stewart & Co. *vs.* Sonneborn, was still pending in the said Circuit Court of Barbour County, a petition to have Sonneborn declared an involuntary bankrupt, was filed in the District Court of the United States, at Montgomery, Alabama, on the 15th August, 1873. The said petition was sworn to by William Libbey, one of the firm of A. T. Stewart & Co., and set forth specifically the debt due to his said firm by said Sonneborn, and alleged that Sonneborn had committed an act of bankruptcy within the meaning of the Bankrupt Act of Congress, in this, to wit: "In that the said Meyer Sonneborn, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, has procured

or suffered his property to be taken on legal process with intent to give a preference to one or more of his creditors, in this: that said Meyer Sonneborn, being insolvent, or in contemplation of insolvency or bankruptcy, did on 12th day of June, 1873, suffer and permit the recovery of a certain judgment against him by default in the City Court of Eufaula, in the County of Barbour, and State of Alabama, in favor of one Jonas Sonneborn, for the sum of six thousand nine hundred and forty-four $\frac{43}{100}$ dollars, upon which judgment an execution has been issued and a levy duly made, as your petitioners are informed and believe."—p. 29.

The petition prayed that Sonneborn may be declared a bankrupt, and that a warrant may be issued to take possession of his estate.

An order to show cause why said petition should not be granted, was issued by the Register on said 15th August, 1873, and made returnable the 21st day of said month.—p. 28–9.

A petition for injunction and warrant of seizure was also filed in said Bankrupt Court, on 15th August, 1873, based on special affidavit that Sonneborn was about to leave the State of Alabama, and that petitioners believed that he was about to remove his goods and chattels from said district, or make such disposition of the same as would prevent them from coming into the hands of an assignee to be appointed by the Court. In this affidavit special reference was made to the handbills or posters published by Sonneborn in the City of Eufaula, proposing to sell off his goods at and below New York costs.

The Register granted the petition and provisional warrant of seizure—p. 31–2

The Marshal, under the directions of said warrant, took possession of the goods, merchandise, and books of said Sonneborn, on 16th August, 1873, and made return thereof to said Bankrupt Court. On 21st August, 1873, Sonneborn appeared in said District Court, in answer to the order

to "show cause," and filed his plea in writing, denying any indebtedness to A. T. Stewart & Co.; and further, denying that he had committed any act of bankruptcy, and demanding a trial of these issues by a jury.

On motion of Sonneborn's attorney, a bond of indemnity in the sum of five thousand dollars was given by the petitioners, A. T. Stewart & Co. The condition of said bond was as follows, to wit: "Now the condition of this obligation is such that if the above bounden A. T. Stewart & Co. shall well and truly save harmless and indemnify the said Meyer Sonneborn from any damages he may sustain by virtue of the obtaining of the provisional warrant issued in this matter, or of the restraining orders directed to issue herein, and from all damages accruing to him by virtue of the issuing of the same, and from all damages he may sustain by the seizure of his goods and effects under said warrant, if on the final hearing of said creditors' petition to have the defendant adjudicated a bankrupt, the said defendant shall prove that he is not bankrupt, and the proceedings against him by the said petitioning creditors shall be dismissed. In case said proceedings are not dismissed, or if said Meyer Sonneborn shall be adjudicated a bankrupt thereunder, then this obligation to be void, otherwise to remain in full force." As will more fully appear by reference to page 43 of the printed transcript.

Afterwards, to wit, on 17th November, 1873, the cause of A. T. Stewart & Co. *vs.* Meyer Sonneborn, was called for trial in the Circuit Court of Barbour County, and plaintiffs' attorneys moved the Court for a continuance on the ground that plaintiffs had filed a petition in bankruptcy to have defendant declared an involuntary bankrupt. Which motion the Court over-ruled, and forced the plaintiffs to a trial, which resulted in a verdict for the defendant. An appeal was taken to the Supreme Court of Alabama, and the judgment below was affirmed.

On September 5th, 1874, Judge Busteed, of the District Court of the United States, sitting in bankruptcy at Montgomery, Alabama, on being advised of the result of the suit of Stewart & Co. *vs.* Sonneborn, in Barbour County Circuit Court, dismissed the petition of Stewart & Co. to have Sonneborn declared an involuntary bankrupt. The property of the defendant which had been seized and held by the Marshal, was then restored to him.

Meyer Sonneborn then commenced his suit, *in action on the case*, against A. T. Stewart & Co., for damages. The gravamen of the complaint was that the defendants, (A. T. Stewart & Co.,) "without having any debt or demand against complainant, or any reasonable or probable cause therefor, wrongfully, maliciously, vexatiously, recklessly and oppressively" caused the said bankruptcy proceedings to be instituted against him, and his property attached, whereby he was greatly damaged in the value of his goods, and his credit as a merchant; and that he was otherwise greatly injured, and sustained damage "*in the amount of necessary and reasonable lawyer's fees, paid and contracted to be paid* by him to his attorneys employed in and about his expense in said wrongful proceedings, *and in bringing this action to recover the damages he has sustained*, as hereinafter set forth, and which defendants refuse and fail to pay plaintiff, *the said fees being reasonably worth fifteen thousand dollars*, or other large sum"—see complaint on page 3, of the printed transcript.

EXCEPTIONS TO THE CHARGE OF THE COURT, AND ASSIGNMENT OF ERRORS.

On the trial of this cause in the United States Court at Montgomery, Alabama, Justice Bradley and Hon. John Bruce, who was presiding with said Justice, in the place of Judge Woods, the Circuit Judge, who was absent, the defendants, A. T. Stewart & Co., by their counsel excepted

specifically and separately to the following portions of the direct charge given to the jury by the Court, and now assign the same, separately and collectively, as grounds for error; and insist upon them and each of them for a reversal of the case:—

1st.—Defendants excepted to that portion of the charge of the Court on page 157 of printed transcript, which was as follows, to wit:—"But if they had no legal claim or demand against the complainants, then whether they had such probable cause or not, they had no right to institute the proceedings. They cannot go back and allege that though they had not a legal debt or claim against him, they thought they had; in other words, that they had probable cause to believe they had such a demand. Unless they had a debt they cannot allege probable cause for proceeding in bankruptcy at all. Their defense cannot stand on two (2) probable causes, one on the top of the other."

2nd—Also, to the following: "But as no such decree was made, and as the proceedings on the contrary were dismissed, and as it has been adjudicated by the Circuit Court of Barbour County, and affirmed by the State Supreme Court, that the defendants never had a legal claim against the plaintiff, and therefore had no right to institute proceedings in bankruptcy against him, the plaintiff is entitled to recover *in this action* the damages he has sustained by these unlawful proceedings. The Court therefore rules that the defence in this case cannot be sustained by proving that the defendants had probable cause to believe that the plaintiff had committed an act of bankruptcy; but, it being shown by judicial determination that they had no legal debt or claim against the plaintiff, and had, therefore, no right to institute bankruptcy proceedings, they are liable for the damages sustained by the plaintiff thereby, and the only question for the jury will be the amount of the damages under the circumstances of the case."

3rd—Also, to the following: "We charge you therefore, that the plaintiff is entitled to receive his actual damages, or the loss he has actually sustained at all events."

4th—Also, to the following: "Damages are to be allowed the plaintiff for the breaking up of his business and the destruction of his credit."

5th—Also, to the following: "It has been claimed that the destruction of the plaintiff's credit is a distinct item of damage; but perhaps this is to be considered as incorporated with his business and the injury thereto, as included in the damage for breaking up said business. The jury will judge whether any separate allowance should be made therefor."

6th—Also, to the following: "The actual damages sustained by the complainant you will give him a verdict for at all events."

The defendants asked the Court to give the following charges, which were in writing; all of which the Court refused to give, and to such refusal to give each and all three of said charges, the defendants, by their counsel, excepted, and now assign the same as grounds for error.

1st.—"If the jury believe, from all the evidence, that A. T. Stewart & Co. acted on the advice of counsel in prosecuting their claim against Sonneborn, in the Circuit Court of Barbour County, and upon such advice had an honest belief in the validity of their debt and their right to recover in said action; and in the institution of the bankruptcy proceedings acted likewise on the advice of counsel, and under an honest belief that they were taking and using only such remedies as the law provided for the collection of what they believed to be a *bona fide* debt; they having first given a full statement of the facts of the case to counsel, then there was not such malice in the wrongful use of legal process by them as will entitle the plaintiff to recover in this form of action."

2d.—"That notwithstanding the prosecution of the proceedings in bankruptcy by A. T. Stewart & Co. against Sonneborn may be a wrongful use or abuse of legal process, for which A. T. Stewart & Co. may be liable on the *bond* given to obtain a writ of seizure and an injunction in said proceedings for the actual damages sustained by Sonneborn, yet, unless they further believe from the evidence that A. T. Stewart & Co. were actuated by malice in commencing and prosecuting said proceedings, then the plaintiff is not entitled to recover in this form of action."

3d.—"That the jury, if they find for the plaintiff, cannot, in estimating the amount of damages, consider the fees of counsel in prosecuting this cause."

BRIEF OF LAW AND ARGUMENT.

This is an action *on the case* for damages claimed, by the defendant in error from the *wrongful and malicious* use of legal process. The legal process complained of is the institution of proceedings for involuntary bankruptcy by plaintiffs in error against defendant in error, and the provisional seizure of defendant's goods under the provisions of those Statutes of the United States known as the Bankrupt Law. But it makes no difference in this action whether the "legal process" complained of was a part of the Bankrupt Law, or any other part of the Federal Statutory Law, or a part of the Statutory Law of the State of Alabama, or a part of the common law, for it is not alleged, nor proved, that the defendant in error brought his action pursuant to the provisions and sanction of any Statute, State or Federal.

His action is simply a *common law* action on the case for damages which he claims to have sustained because the plaintiffs in error instituted a suit against him in the United States District Court for the Middle District of Alabama, and failed in said suit.

At common law no such action could be maintained without averring and proving malice.

Benson & Co. *vs.* McCoy, 36 Ala., 710;
McKellar *vs.* Couch, 34 Ala.; 336;
3 Blackstone's Comm., 100 and note; (marg. page 126).
Lindsay *vs* Larned, 17 Mass., 191;
McLaren, Ragan & Co. *vs.* Bradford, 26 Ala., 616;
McCullough *vs.* Grishobber, 4 Serg. & Watts, 201;
Stone *vs.* Swift, 4 Pick., 389;
Garrard *vs.* Willett, 4 J. J. Mar., 630;
White *vs.* Dingley, 4 Mass., 433;
Turner *vs.* Walker, 3 Gill & John, 377;
Morris *vs.* Corson, 7 Cowen, 281;
Ives *vs.* Bartholomew, 9 Conn., 309;
Marshall *vs.* Betner, 17 Ala., 832;
Tatum *vs.* Morris, 19 Ala., 302;
Vandryen *vs.* Linderman, 10 John, 106;
De Medina *vs.* Grove, 10 Ad. & Ell. (N. S)., 152, 168, 172, and 177;
Churchill *vs.* Liggers, 3 Ell. & Black, 937;
Olinger *vs.* McChesney, 9 Leigh, 660;
2 Greenleaf Ev. § § 449-453.

"The mere *wrongful* resort to legal process affords no ground of action."

McKellar *vs.* Couch, *supra;*
Co. Litt. 161, (*b*), note.

It is *damnum absque injuria*, the costs being cast upon the unsuccessful party "as a satisfaction to the defendant for the inconvenience of being held to defend a groundless suit." McKellar *vs.* Couch, *supra*, 341; Robertson *vs.* Robertson, Sup. Court Ala., December Term, 1877, in M. S. The plaintiff below understood this principle well it seems, and framed his complaint accordingly, alleging

that these plaintiffs "wrongfully, maliciously, &c.," made use of the legal process against him. See page 2 of the Printed Transcript, at top.

As shown by the authorities above cited, the misuse of legal process must not allege to be wrongful *and* malicious, but the wrong and the malice must *both* be *proved*, to sustain the action, or a verdict for damages.

The whole general charge of the Court ignores this essential requisite of *proof of malice*, while those particular portions of the charge to which plaintiffs in error excepted, and which are specified as exceptions No. 1, 2, 3, 4, 5, and 6 in the statement above, are directly in conflict with the principle above stated.

The right to recover even actual damages was conditioned on the misuse of the legal process being malicious; otherwise a suit for the actual damages might have been commenced without any *allegation* as to malice in the complaint, and will hardly be disputed that such complaint would be demurrable.

This principle is sustained by sound reason and wise policy.

It would not only open a floodgate to allow every defendant to bring suit in turn against the unsuccessful plaintiff, but the very fear of such suits, and the possibilities of failure amid the uncertain toils of law, would, in many instances, amount to a denial of justice, and a shield and protection to injustice, rapacity and aggression.

Costs are the only damages allowed to successful defendants in civil suits, when there is no malice on part of plaintiff; except in those special cases in which other damages are allowed by special statutes,—such as suits on attachment, injunction, detinue and other bonds. Not even can attorney's fees incurred in defending ordinary civil suits, in absence of statutory provisions, be allowed against plaintiffs.

Oelrichs *vs.* Spain, 15 Wall., 230;

Robertson, *vs.* Robertson, Sup. Court Ala., December Term, 1877, in M. S.

Hence the Circuit Court erred in refusing to give the charge asked by the defendants below, numbered 3.

There are some decisions made by the Supreme Court of Alabama, which may be relied on to sustain the proposition that an action on the case can be maintained for the mere wrongful suing out of an attachment; and it may be contended that the principle of those decisions can by analogy be extended to this case.

The cases are

Wilson *vs.* Outlaw, Minor, 367;
Kirksey *vs.* Jones, 7 Ala., 625;
McCullough *vs.* Walten, 11 Ala., 495;
Donnell *vs.* Jones, 13 Ala., 492;
Forrest *vs.* Collier, 20 Ala., 175;
Seay *vs.* Greenwood, 21 Ala., 493.

These cases are all reviewed in the able opinion of the Court in the later case of McKellar *vs.* Couch, *supra*, wherein they are shown to depend entirely upon statutory provisions.

It is not contended in this case that there are any special statutory provisions upon which the action is based.

To sustain an action on the case for a malicious prosecution, four points must occur, the absence of either of which will be fatal to the right of the plaintiff to recover. (1) Falsehood in the demand; (2) Want of probable cause; (3) Malice in the defendant; (4) Damage to the plaintiff, 3d Blackstone's Commentaries by Chitty, marginal page 126, note 13.

At the time the judgment in the City Court of Eufaula was suffered by Meyer Sonneborn to go by default against him in favor of his brother Jonas Sonneborn, *that fact* alone was an act of bankruptcy as decided by the Supreme Court of the United States in the case of Buchanan *vs.* Smith, 16th Wallace, 277. It is true that decision was afterwards overruled by the Court; but at the time when the proceedings in bankruptcy were commenced by A. T. Stewart & Co., against Sonneborn, the decision in the case of Buchanan and

Smith was in force. A. T. Stewart & Co. had therefore the right to act upon the authority of that decision in filing their petition in the Bankrupt Court.

Did A. T. Stewart & Co. have probable cause to believe they had a *bona fide*, legal demand against Meyer Sonneborn? The evidence shows that Meyer Sonneborn was a member of the firm of E. Leipseiger & Co. in 1865 and 1866; that they opened an account in 1865 with the defendants in their firm-name of E. Leipseiger & Co.; that goods were sold to them every month on the joint responsibility of both members of the firm, down to March, 1867; and that the goods for which Sonneborn was sued in Barbour Circuit Court, were purchased by E. Leipseiger & Co. before A. T. Stewart & Co. ever received any notice of the retirement of Sonneborn from said firm of E. Leipseiger & Co. The testimony of Shorter shows that he was the attorney of A. T. Stewart & Co., and advised them, upon the facts stated, that they had a valid legal demand against Sonneborn. The suit was brought upon the advice of counsel; and notwithstanding the verdict of the jury was against A. T. Stewart & Co., the evidence in the case clearly shows that the verdict should have been in favor of the plaintiffs in the Circuit Court of Barbour County. The verdict as rendered was against the law and evidence, and a new trial ought to have been granted by the presiding Judge. The verdict of the jury and the refusal of the Court to grant a new trial, can only be attributed to local prejudice against the plaintiffs, or to worse cause.

The advice given by Shorter stated the law correctly.

Gow on Partnerships, 249, 250.
I. Parsons on Contracts, 144, 145.
Graves *vs.* Murray, VI. Conn., 700.
Prentice *vs.* Sinclair, V. Vermont, 149.
Grant *vs.* Cole, VIII. Ala., 519.

A. T. Stewart & Co. then had probable cause for believing that they had a subsisting legal demand against Meyer Sonneborn. Acting upon this honest belief, and the advice of counsel, there could have been no actual or implied malice on their part in seeking all the remedies to collect their debt which the law afforded.

Speaking of malice as a necessary element to be proven, to enable a plaintiff to recover, in case for a malicious prosecution, Mr. Chitty says, in the note above referred to, that "malice also is an essential requisite to the support of this action, and it is not sufficient to prove that the writ was sued out, or the arrest made, after the payment of the debt, but express malice must in such cases be proved.—1 Bos. & P., 388; 2 B. & P., 129; 3 East, 314; and in a late case, where a writ was issued by mistake against the son instead of the father, and he was imprisoned four days, Ch. J. Abbott held, that as there was no evidence of malice, the action was not sustainable."

The learned Justice in his charge to the jury in this case, and in his refusal to give the charges asked in writing by the counsel for the defendants, wholly ignored the principles of law here contended for; and instructed the jury that, in an *action on the case* for a malicious prosecution for instituting bankruptcy proceedings against Sonneborn, the plaintiff could recover from defendants his actual damages, regardless of the questions of probable cause and malice on the part of the defendants.

Again, in the 5th exception to portions of the direct charge of the Court, in respect to the damages sustained by the plaintiff in respect to his credit, a *question of law* seems to have been left to the jury exclusively. If that is a fair construction of the charge given to the jury, it was clearly erroneous, as the Court is bound to tell the jury what the law is, and the jury are to decide only on the evidence—See 157–8 of the printed transcript.

But if the Court should decide against us on all the points herein before relied upon by the plaintiffs in error, then we say further, that the Court erred in refusing to give the third written charge asked by defendants, which was in these words, to wit:—"That the jury, if they find for the plaintiff, cannot, in estimating the amount of damages, consider the fees of counsel in prosecuting this cause."

The law is well settled that counsel fees expended by the plaintiff in prosecuting, or defending, his cause cannot be allowed as part of the damages.

Arcambel *vs.* Wiseman, 3 D., 303;
Day *vs.* Woodworth, 13 H., 363;
Teese *vs.* Huntingdon, 23 H., 2;
Whittemore *vs.* Cutter, 1 Gall., 429;
Blanchard Gun-stock Turning Factory *vs.* Warner, 1 Bl. C. C., 258;
Pacific Insurance Company *vs.* Conard, Bald., 138;
Simpson *vs.* Leiper, 2 Whart. Dig., 414;
Stimpson *vs.* The Railroads, 1 Wall, Jr. C. C., 164;
See specially Oelrichs *vs.* Spain, 15 Wallace, 230-1.

The complaint, in this case, expressly charged as a part of the damages claimed by the plaintiff, not only the counsel and attorney fees expended by him in defending the bankruptcy proceedings, but also for bringing and prosecuting this suit against A. T. Stewart & Co. The amount claimed for these two items together was placed at the sum of $15,000 (page 3.) In the second count of the complaint (page 8,) the plaintiff claimed that his attorney and counsel fees paid and to be paid for defending the bankruptcy case, amounted to $2,000, thereby leaving the jury to infer that he claimed the sum of $13,000 as damages for attorneys' fees for prosecuting his present suit.

To sustain this element of damage, Mr. Semple, an experienced lawyer of the Montgomery bar, was introduced as a witness. He testified that plaintiff was entitled to at least $1,000 for his attorneys for *bringing this suit for damages*, and a much larger amount dependent on the recovery, (page 102). This evidence was clearly illegal, upon the authorities above cited; and the written request asked by the counsel for the defendants that the jury, provided they found a verdict for the plaintiff, should not allow anything to the plaintiff for counsel and attorney's fees for prosecuting this suit, ought to have been given. The refusal of the Court to give this charge was erroneous and worked a serious damage to the defendants.

This same principle was re-affirmed by the Supreme Court of Alabama, in case of Robertson *vs.* Robertson, *et al*, in M. S., in which the Court say, "In the absence of statutory provisions, the defendant in a civil cause has no recourse against the plaintiff for counsel and attorney's fees incurred in defense of the suit; and hence, where the plaintiff is permitted to avail himself of extraordinary remedies only upon executing bond with surety to pay all damages his adversary may sustain thereby, the extent of the liability must be measured and ascertained by reference to the Statute or the bond." In this case the record shows that, on motion of Sonneborn, the defendants gave an attachment bond in the sum of five thousand dollars, to hold the plaintiff harmless by reason of the seizure of his goods. This bond he accepted, and made no objection to the amount for which it was given, and it was approved by the Court. He was therefore, in the absence of malice and probable cause, confined to a suit on the bond, if its conditions had been broken, and the measure of damages was limited to the amount of the bond itself.

Roscoe Conkling - C. P. Beck.

and ELI S. SHORTER,

Counsel for Plaintiffs in Error.

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Roscoe Conkling - C. P. Keck.

and ELI S. SHORTER.

Counsel for Plaintiffs in Error.

Supreme Court United States.

A. T. STEWART & CO.

vs.

M. SONNEBORN.

No. 92.

P. PHILLIPS,
W. HALLETT PHILLIPS,
for Defendant in Error.

R. O. Polkinhorn, Printer.

Supreme Court United States.

A. T. STEWART & CO.
vs.
M. SONNEBORN.
No. 92.

Brief of P. Phillips and W. Hallett Phillips, for Defendant in Error.

The plaintiff in error had a demand against the firm of Leipzeiger & Co. of New York for goods sold and delivered.

Sonneborn, the defendant in error, had at one time been a member of that firm.

The controversy between them arose out of the fact, alleged by defendant, that prior to the date of this demand he had withdrawn from the firm and given notice thereof. This was denied by the plaintiff.

The defendant had removed from New York, in April, 1866, and located his business as a dry goods merchant in Eufaula, Alabama.

The plaintiffs, after a correspondence with their attorneys in Eufaula, as to whether they could succeed in fixing a liability on the defendant as a partner, and being advised by them they could, instituted an action against Sonneborn in the Circuit Court of Barbour.

On the trial witnesses were examined as to the fact of notice of the withdrawal from the partnership; and on the hearing there was a verdict and judgment for the defendant.

Stewart & Co. appealed to the Supreme Court on exceptions to the judge's charge as to what constituted sufficient notice. 49 Ala., 181.

The judgment was reversed for mis-direction, and before the second trial was had Stewart & Co. filed a petition in the District Court to have Sonneborn adjudged a bankrupt on the allegation that, in contemplation of insolvency, he allowed a judgment to be rendered against him by default. p. 29.

Sonneborn was called on to show cause, but before the period allowed for this, Stewart & Co. procured to be issued by the register in bankruptcy a writ of seizure, by which the entire stock of merchandise and all the books and papers of Sonneborn were taken into the possession of the marshal.

This was also accompanied by an injunction restraining certain persons therein named, not only from interfering with said merchandise, but also from disposing of or interfering with any monies or assets in their possession or control and placed with them by "said Sonneborn, or by one Price, or any other person." pp. 5, 6.

On the 21 August, the day directed by order of the Court, Sonneborn showed cause why the prayer of the petitioner should not be granted—denying specifically the allegations of the petition as to any indebtedness, averring that he was solvent and able to pay 100 cents on the dollar; that his non-indebtedness to petitioners had been determined in the suit brought by the petitioners in the Circuit Court of Barbour, and alleging "that so uncertain and contingent do the petitioners regard said demand, that through Messrs. Shorter & Brother, their attorneys in Eufaula, they have repeatedly offered to compromise it" for $1,000, though the demand, with interest exceeded the sum of $3,500.

As to the judgment by default, alleged in the petition, this he admits, but denies that any levy has been made, and avers that he was arranging for its payment, and will be able to do so without any levy upon or sale of his stock of goods. p 37.

An amended petition was thereupon filed averring another act of bankruptcy. This is signed, not by the plaintiff, but by Henry R. Shorter, attorney for Stewart & Co., who verifies the same. Page 41.

Another rule to show cause, and another answer is made by Sonneborn, denying the allegation of the amended petition. p. 45.

Still another amended petition was filed October, 1873, in which the demand of Stewart, originally stated as resting on judgment, was altered to appear as "an account for goods, wares, and merchandise." p. 48

Most of these statements are found in the agree-

ment of counsel, p. 56, by which it also appears that on the second appeal to the Supreme Court of the State, after the second verdict in favor of Sonneborn, the judgment was affirmed at the January Term, 1874. (51 Ala., 126.)

Upon the facts set forth in this statement, the parties asked the judgment of the District Court upon the petition in bankruptcy, and on the 5 September, 1874, it was "ordered, adjudged, and decreed that judgment go for the defendant herein." p. 59.

Upon the rendition of this judgment, Sonneborn filed his complaint in the circuit court of the State against Stewart & Co., by process of attachment, claiming damages for the wrongful, vexatious and malicious suing out the proceedings in bankruptcy, and for causing to be issued the writ of seizure without any order from the "district court or judge thereof."

The defendants appeared, and a large number of witnesses were examined on the matter of notice.

The depositions being all taken, Stewart & Co. petitioned for and obtained an order for the removal of the cause to the circuit court of the United States. p. 17.

By agreement of counsel, the complaint was filed in the circuit court as part of the transcript, with leave to the parties to read all the original papers, or any transcript thereof, in the supreme court of the State, and also those referring to the bankruptcy proceedings. p. 19.

On 29 May, 1875, the case was heard by Mr. Justice BRADLEY, with District Judge Bruce, and submitted to a struck jury, empaneled under a statute of the State. Whereupon, a verdict and judgment were rendered for plaintiff in the sum of $21,000. p. 20.

From p. 23 to p. 152 is what is termed the bill of exceptions—made up, it appears, on a stipulation entered into 8 July, 1875—that it might be signed in vacation. p. 23

It is signed, not by the presiding judge, but by Judge Bruce, on 6 September, 1875. p. 158.

~~What is called the bill of exceptions~~, is made up in defiance of all rules and repeated decisions. The court is to be ~~called~~ to search amidst all this chaff for the few grains of value, if, indeed, there are any.

Lincoln vs. *Claffin*, 7 Wall., 132.

In examining the prayers for instruction, which were refused and which include all that is really to be considered, it will not be necessary to refer to this evidence even if it were properly presented.

These prayers Judge BRADLEY refused, "except as they were contained in and qualified by the preceding charge."

The first was, that if the jury believed that Stewart & Co., acting under advice of counsel, and in an honest belief they had a valid debt, and were only using such remedies as the law provides, no recovery could be had in this action.

2. That, though the proceedings in bankruptcy were an abuse of legal process, yet, if there was no

malice, no recovery can be had. The only remedy being on the bond given on the issue of the warrant of seizure.

3. That in estimating the damages the fees of counsel in *prosecuting this cause* could not be included.

We take the third prayer first and find that Judge BRADLEY had already charged the jury (p. 155), that in estimating the damage, the defendant's expenses "for lawyers' fees in following up and setting aside the *proceedings in bankruptcy*, are a fair item to be allowed."

No exception was taken to this portion of the charge, and therefore no assignment of error can now be made thereon.

The court having already limited the counsel fees to a particular proceeding, was not called upon to give an instruction that the fees were not to be allowed in another and different proceeding.

The question of fees being fairly and distinctly disposed of—by the Court in its own way—they are not called on to give an instruction in the manner that counsel may dictate.

Indiana R. R. vs. *Horst*, 93 U. S., 291.
Railroad Co. vs. *McCarthy*, 96 U. S., 258.

As already said, the instruction *was refused except as contained and qualified by the preceding charge.*.

The first instruction asked raises the pivotal question of the case.

It had been determined by the tribunal, whose jurisdiction had been invoked by Stewart & Co., that they had no debt against Sonneborn; that he had withdrawn from the firm of Leipzeiger & Co., and had duly notified Stewart & Co. of the fact before their demand against that firm had been created.

Mr. Justice BRADLEY held that the plaintiff could not recover for the mere wrongful prosecution of the bankruptcy proceedings, but it must also be shown that there was no probable cause therefor.

That a want of probable cause is evidence of malice sufficient for the recovery of the *actual damage* sustained.

That to justify the proceedings in bankruptcy there must be a legal debt or demand as the basis of the petitioner's right to proceed.

Where this existed, the petitioners could defend themselves by showing they had probable cause to believe that an act of bankruptcy had been committed.

But where the petitioners had no demand and were not creditors, they had no right to institute the proceedings.

They cannot go back and allege that, though they had no demand—they *thought* they had—their defense cannot stand on two probable causes, one on the top of the other.

Therefore, as the District Court had dismissed the petition, and as the Circuit Court of Barbour and the Supreme Court had decided that the petitioners never had a claim against Sonneborn, he is entitled to recover the damage he has sustained.

The Court then cautions the jury, telling them that

exemplary damages could only be recovered by proof of actual malice.

No one has the right to force another into bankruptcy if he be not a creditor. This is not merely a proceeding to collect a debt. A creditor for $300 may cause to be seized the whole of a man's estate, however large.

In attachment cases, where the law allows a seizure of property, the levy must bear some just proportion to the debt claimed.

The gravity of this proceeding is understated by Mr. Justice BRADLEY, when he says: "Throwing a man into bankruptcy is a serious thing, and ought not to be resorted to as a proceeding *in terrorem* to collect a debt."

One who resorts to these extraordinary provisions of law must, therefore, do so at his peril.

The judgment rendered in favor of Sonneborn in the action instituted by Stewart & Co., is certainly conclusive on the question that they were not his creditors.

In *Jones* vs. *Kirkland*, where the plaintiff had succeeded in recovering judgment, it is held that the defendant in an action for wrongfully sueing out the attachment could not be permitted to show that this was for usury—the judgment being held as conclusive of probable cause. 10 Ala., 839.

The converse of the proposition is if the defendant had obtained judgment on proof that he was not indebted, there would be no probable cause.

So in *Lockhart* vs. *Woods*, it was held that the charge asked for by plaintiff should have been given; for, say the court, if there was no debt the attachment was wrongfully sued out. 38 Ala., 637.

And in *Foster* vs. *Sweeny*, it is said by GIBSON, C. J., "It cannot be doubted that to attach the property of a debtor, not within the purview of the attachment law, is an abuse of the process of the law for which an action lies."

14 Sarg. & R., 387.

In *Rockham* vs *Cowell*, it is held that a valid discharge in bankruptcy extinguishes the debt, so that the creditor who seizes the bankrupt goods by virtue of the judgment and execution thereon, may be charged as a trespasser, even if he had no knowledge of the discharge. He acts at his peril.

1 Comstock, 596.

If, then, there was no debt there was no probable cause, and the want of probable cause implies legal malice.

What constitutes probable cause is for the determination of the judge. Whether a party had reason to find probable cause in the circumstances with which he was acquainted is immaterial if those circumstances do not amount in law to probable cause. 1 Taylor Evid., § 23.

Malice, in fact, differs from malice in law in this: The former denotes an act done from ill-will to an individual; the latter, a wrongful act, intentionally done, without just cause.

Bronage vs. *Prosser*, 4 Barn & Cros., 321;
Watson vs. *Moore*, 2 Cush, 140.

An entire absence of actual malice may consist with the absence of every reasonable ground for the belief of the parties' guilt. But the law implies malice when there is not proof to extenuate an act which has been rashly and indiscretely done.

Long vs. *Rodgers*, 19 Ala., 321, (citing 3 Starkie's Rep., 389).

The consequence of this distinction between legal and actual malice is this: when the malice is only such as results from a groundless act, and there is no actual malice, none but *compensatory* damages are allowed:

"And this includes actual injury to property, loss of time, pecuniary expenses, counsel fees, and any other loss suffered."

Opinion by Judge STRONG.

Burnett vs. *Reed*, 51 Penn. Stats., 190.

In all cases of trespass, although purely unintentional, unless caused by inevitable accident, the party in default must respond in damages, and the intent is only material in aggravation or mitigation of damages.

Sedgwick on Damages, 660.

Tracy vs. *Swatout*, 10 Pet., 80.

And so in *Bates* vs. *Clark*, when officers of the Government seized a lot of whiskey upon the ground that the owner was violating an act of Congress forbidding its sale in the Indian Territory, the Court say: "As to the plea, they had good reason to be

lieve that this was Indian country, and that they acted in good faith while it might excuse them from *punitory* damages is no defense to the action. The fatal objection to the defense is, that in that locality they were without authority in the premises; and their honest belief that they had, is no defense in their case more than in any other where a party mistaking his rights commits a trespass by forcibly seizing and taking away another man's property.

96 U. S., 209;

This case in its main features are strikingly like the one before us, as is shown by the instruction asked for by the defendants.

In the declaration, the seizure of the whiskey was stated to have been done "unlawfully and maliciously.".

The defendants asked the court to charge that if they had probable cause to believe that the goods had been forfeited to the United States by the act of the plaintiff, and that they had seized the goods for the sole purpose of placing them in custody of a court having jurisdiction to enfore the forfeiture, and that the goods were taken from their possession by warrant from the court of the United States having jurisdiction, they could not be held liable for the damage.

The court below refused this instruction, and on appeal to the Supreme Court of the Territory the judgment was affirmed.

"However good (say the Court), the intentions of the defendant may have been, they committed against the plaintiff a wilful and unlawful act."

The suing out of process and delivery of the goods to the officer is part of the same transaction, and was in the eye of the law wilfully set on and consumated by the defendants against the plaintiff."

There is, then, no foundation, in reason, for exempting from liability one who uses the rigorous provisions of law to the damage of another, when he is not within the description of those for whom these provisions were enacted

In reference to the second prayer, that while a recovery could be had on the bond for the wrongful use or abuse of legal process, this action would not lie, without Stewart & Co. were actuated by malice.

The authorities would seem to concur that the execution of a statutory bond does not take away the common law remedy.

Chapman vs. *Pickersgil*, 2 Wil. 145;
Lawrence vs. *Hagerman*, 56 Ill., 68.

In *Brown* vs. *Chapman*, in an action in the case for suing out a commission in bankruptcy, it was insisted for defendant that, as the statute required the petitioner to give a bond which might be assigned to the party injured, the action would not lie.

Lord MANSFIELD, C. J., said: "This case is too clear to hear any argument on the other side. There is no clause to take away the jurisdiction of the common law."

W. Blackstone, 1 vol., 427.

We have heretofore referred to the character of the bill of exceptions.

At page 157, Mr. Justice BRADLEY certifies that "this, their bill of exceptions, is signed accordingly."

Then follows what purports to be another bill of exceptions, in which the instructions asked for and refused, as certified by Judge BRADLEY, are again set forth, together with a statement that "the defendants, by their counsel, excepted to the following portions of the charge."

This is signed not by the presiding justice, but by the district judge many months after the trial.

There is nothing in the agreement by counsel, at p. 23, dispensing with the signature of the presiding justice; nor is there any authority in section 953, R. S., which would allow a bill of exceptions in such a case to be signed by the district judge.

Again, in this second document, while it is stated that the defendant "excepted to the following portions of the charge, it is not averred that these exceptions were taken at the trial, *and while the jury was at the bar.*"

This is not a technical rule, but one intended to subserve substantial justice. For when the judge is informed in time that a party excepts to his opinion, he has an opportunity of reconsidering on explaining it to the jury.

Phelps vs. *May*, 15 How., 160.

The case should therefore be considered independently of this second document, though its statements are not deemed material if allowed to affect the real controversy in issue.

P. PHILLIPS,
W. HALLETT PHILLIPS,
for Deft. in Error.